tinction in every field of endeavor; to the Committee on Foreign Affairs.

1051. By Mr. SWEENEY: Petition of Mr. and Mrs. M. Lange, 9504 Adams Avenue, Cleveland, Ohio, protesting against the barbarities by the Hitler regime upon the Jews in Germany; to the Committee on Foreign Affairs.

1052. By the SPEAKER: Petition of the city of Chelsea, Mass., opposing the closing of the United States naval hospital located in Chelsea; to the Committee on Naval Affairs.

# SENATE

## TUESDAY, MAY 16, 1933

*(Legislative day of Monday, May 15, 1933)*

The Senate, sitting as a court for the trial of articles of impeachment against Harold Louderback, judge of the United States District Court for the Northern District of California, met at 11 o'clock a.m. on the expiration of the recess.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The respondent, Harold Louderback, with his counsel, Walter H. Linforth, Esq., and James M. Hanley, Esq., appeared in the seats assigned to them.

### CALL OF THE ROLL

Mr. ASHURST. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Adams | Copeland | Kendrick | Robinson, Ark. |
| Ashurst | Costigan | Keyes | Robinson, Ind. |
| Austin | Couzens | King | Russell |
| Bachman | Cutting | La Follette | Schall |
| Bailey | Dale | Lewis | Sheppard |
| Bankhead | Dickinson | Logan | Shipstead |
| Barbour | Dill | Long | Smith |
| Barkley | Duffy | McAdoo | Steiwer |
| Black | Erickson | McCarran | Stephens |
| Bone | Fess | McGill | Thomas, Okla. |
| Bratton | Fletcher | McKellar | Thomas, Utah |
| Brown | Frazier | McNary | Townsend |
| Bulkley | George | Metcalf | Trammell |
| Bulow | Glass | Murphy | Tydings |
| Byrd | Goldsborough | Neely | Vandenberg |
| Byrnes | Gore | Norris | Van Nuys |
| Capper | Hale | Nye | Wagner |
| Caraway | Harrison | Patterson | Walcott |
| Carey | Hastings | Pittman | Walsh |
| Clark | Hatfield | Pope | Wheeler |
| Connally | Hayden | Reed | White |
| Coolidge | Hebert | Reynolds | |

The VICE PRESIDENT. Eighty-seven Senators have answered to their names. A quorum is present.

### WITNESSES SUBPENAED—REPORT OF SERGEANT AT ARMS

The VICE PRESIDENT. The Chair lays before the Senate sitting as a Court of Impeachment a communication from the Sergeant at Arms, which the clerk will read.

The legislative clerk read as follows:

SENATE OF THE UNITED STATES,
OFFICE OF THE SERGEANT AT ARMS,
*Washington, D.C., May 15, 1933.*

Hon. JOHN N. GARNER,
*Vice President and President of the Senate,*
*Washington, D.C.*

MY DEAR MR. VICE PRESIDENT: There are attached hereto a list of witnesses for the Government submitted to me by the managers on the part of the House of Representatives, and a list of witnesses for the respondent submitted to me by his counsel, all of said witnesses to be subpenaed for the trial of Harold Louderback, United States district judge for the northern district of California.

There are also attached hereto original subpenas personally served by me on the witnesses desired by both parties, said subpenas being duly served and return made according to law.

Respectfully,

CHESLEY W. JURNEY,
*Sergeant at Arms.*

WITNESSES FOR THE GOVERNMENT IN THE IMPEACHMENT TRIAL OF HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Roy Bronson, San Francisco, Calif.; Francis C. Brown, San Francisco, Calif.; W. C. Crook, San Francisco, Calif.; Lloyd Dinkelspiel, San Francisco, Calif.; Harold A. Dittmore, San Francisco, Calif.; Guy H. Gilbert, San Francisco, Calif.; F. L. Guerena, San Francisco, Calif.; C. M. Hawkins, San Francisco, Calif.; Sam Leake, San Francisco, Calif.; Miss Dorothea A. Lind, San Francisco, Calif.; Paul S. Marrin, San Francisco, Calif.; H. H. McPike, San Francisco, Calif.; Fred C. Peterson, San Francisco, Calif.; Erwin E. Richter, San Francisco, Calif.; Sidney Schwartz, San Francisco, Calif.; John Douglas Short, San Francisco, Calif.; T. W. Slaven, San Francisco, Calif.; DeLancy C. Smith, San Francisco, Calif.; Addison G. Strong, San Francisco, Calif.; Delger Trowbridge, San Francisco, Calif.; J. A. Wainwright, San Francisco, Calif.; Randolph V. Whiting, San Francisco, Calif.; Jerome B. White, San Francisco, Calif.; Marion D. Cohn, San Francisco, Calif.; and Sidney M. Ehrman, San Francisco, Calif.

WITNESSES FOR THE RESPONDENT, HAROLD LOUDERBACK, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Miss Grace C. Berger, San Francisco, Calif.; H. B. Hunter, San Francisco, Calif.; George N. Edwards, San Francisco, Calif.; Marshall B. Woodworth, San Francisco, Calif.; Samuel M. Shortridge, Jr., San Francisco, Calif.; John M. Dinkelspiel, San Francisco, Calif.; Herbert Erskine, San Francisco, Calif.; Morse Erskine, San Francisco, Calif.; Harry L. Fouts, deputy clerk United States court, San Francisco, Calif.; J. G. Reisner, San Francisco, Calif.; George D. Louderback, San Francisco, Calif.; Lloyd A. Lundstrom, San Francisco, Calif; William H. Metson, San Francisco, Calif.; J. H. Zolinsky, San Francisco, Calif.; David K. Byers, San Francisco, Calif.; Sam Leake, San Francisco, Calif.; W. L. Glasheen, San Francisco, Calif.; A. B. Kreft, San Francisco, Calif.; Gerald W. Murray, San Francisco, Calif.; Brice Kearsley, Jr., Los Angeles, Calif.; Francis C. Quittner, Los Angeles, Calif.

The VICE PRESIDENT. The letter will be printed and the attached documents will be noted in the Journal.

### THE JOURNAL

The legislative clerk proceeded to read the Journal of the proceedings of May 15, when, on request of Mr. ASHURST and by unanimous consent, the further reading was dispensed with and the Journal was approved.

### HOURS OF DAILY SESSION

Mr. ASHURST. Mr. President, I ask the attention of the senior Senator from Oregon to an order which I am going to propose for consideration.

The VICE PRESIDENT. The Senator from Arizona presents an order, which the clerk will read.

The legislative clerk read as follows:

*Ordered,* That the daily sessions of the Senate sitting for the trial of the impeachment of Harold Louderback, United States district judge for the northern district of California, shall, unless otherwise ordered, commence at 10 o'clock in the forenoon.

The VICE PRESIDENT. Is there objection to consideration of the order?

Mr. McNARY. Mr. President, there is no implication that there will be a separation of the legislative business and the impeachment trial by reason of this proposal?

Mr. ASHURST. There is no suggestion of that kind; but, Mr. President, I am of opinion that from time to time there will arise the necessity for legislative business being transacted. I believe that the Senate sitting as a Court of Impeachment should convene at 10 o'clock and proceed with the taking of the testimony for at least 3 hours a day, and then, as necessity may arise, the Senate may proceed to the consideration of legislative business. It is not intended to have the trial of the impeachment wholly interrupt and suspend legislative business.

Mr. McNARY. It is the purpose, I understand, of the Senator to have the impeachment proceedings commence at 10 o'clock a.m. each day?

Mr. ASHURST. Yes; and run as long as conditions will permit.

Mr. McNARY. And that applies only to the matter now before the Senate?

Mr. ASHURST. Yes, sir.

Mr. McNARY. I have no objection to that.

The VICE PRESIDENT. The Chair will suggest that, of course, the order could be changed at any time the Senate sitting as a court may desire.

Mr. HEBERT. Mr. President, may I suggest to the Senator from Arizona that, unless necessity otherwise requires and a motion to the contrary be made, this case proceed throughout the day from the convening of the Senate at 10 o'clock in the morning without interruption.

Mr. ASHURST. I believe that is a very sensible and practical suggestion and a helpful one. It is the intention, I am sure, of the Senate to proceed with the trial with all possible decent haste and to suspend proceedings of the impeach-

ment only when imperative legislative business shall require. I thank the Senator for his suggestion.

The VICE PRESIDENT. Is there objection to the order submitted by the Senator from Arizona?

There being no objection, the order was considered and agreed to.

PROCLAMATION

The VICE PRESIDENT. The Sergeant at Arms will make the usual proclamation.

The Sergeant at Arms made the usual proclamation.

DEPOSITION OF W. S. LEAKE

Mr. Manager BROWNING. Mr. President, respondent's counsel was cross-examining the witness yesterday at the time of adjournment. I take it that it will be in order to resume the cross-examination this morning.

Mr. HANLEY. Mr. President, prior to proceeding with the witness, there was a matter pending yesterday upon the question of having a commission issued for taking the deposition of W. S. Leake. That matter was continued until today. We are prepared to present the matter as to why a commission should issue. If the Senate and the Presiding Officer desire us to be heard upon that matter, we are willing now to be heard.

Mr. Manager PERKINS. The managers on the part of the House resist the motion to take the deposition of Mr. Leake on the ground, first, that the matter was fully anticipated both by the counsel for the respondent and by the managers and a stipulation entered into that in case Mr. Leake could not be present by reason of illness his deposition taken heretofore would be read. The stipulation entered into provides that upon the trial of the above-entitled matter before the Senate of the United States—

> The testimony of W. S. Leake, taken at the hearing above referred to, may be read upon said trial by either party hereto, with the same force and effect as if the said witness were present and testified in person. This stipulation, however, insofar as said Leake is concerned, is without waiver by either party hereto to insist upon the attendance of said Leake before the court above referred to, and shall become operative only in the event of the nonappearance of said Leake at Washington before said Court of Impeachment.

The application is made merely on the affidavit of the respondent based on information and belief that Leake cannot be here. It is of prime importance in the trial of this matter that if this man Leake's testimony be taken, it be taken before the trial body.

If I may be permitted to do so, I would refer to a telegram received by the Vice President from Leake's doctor which does not in any way indicate that it is impossible for him to be here, but merely that it is impractical, the telegram saying:

> Mr. Leake, under subpena Louderback trial, quite weak physically, due age and cerebral arteriosclerosis. Been his family doctor many years. Travel to Washington impractical, but if imperative should be accompanied by a nurse. Please instruct.

So we resist on the ground, first, that there is no medical testimony here that Leake cannot be here; that it is of prime importance in the trial of this case that this witness, who is charged with being a coconspirator of the respondent, be in the presence of the trial body and his demeanor and testimony examined here rather than to take his deposition far away, where no one knows the circumstances. Furthermore, there is no person on the part of the managers who could examine this man in California. In order to properly further examine Leake it is necessary to have a complete knowledge of the case.

We therefore insist the matter was fully concluded by the stipulation entered into when both parties knew it was possible that Mr. Leake could not be present.

Mr. HANLEY. Mr. President and members of the court, this is a very important matter to the respondent, Judge Louderback. The situation is just this: At the time of the special hearing and the alleged deposition of W. S. Leake no charges were filed against Judge Louderback, no question of conspiracy was made, and it was only subsequent to the filing of the impeachment articles that we knew for the first time that he was charged with conspiracy. Leake is alleged to be a conspirator. Without the testimony of Leake, how are we going to meet that situation?

The two managers were out upon the coast in the early days of May, this month, and at that time we wished to take the deposition of Leake, anticipating the conditions here. It is true we have received a stipulation, but it does not go far enough. It was "Hobson's choice" with us. We wanted what they had, but we wanted more. We were entitled to more. This trial cannot be completed with the number of witnesses now here, and we can have the deposition taken. There is no great amount of learning involved to take the deposition of Leake. Our friend from New Jersey who just spoke is a flyer. He came out to California in 30 hours. He could do it again over the week-end and take the deposition and could be back here in another 48 hours with the deposition, which would be upon Tuesday next.

In justice to Judge Louderback, it is of importance that this deposition be taken. We stand upon our subpena to have him here. If we cannot get an order by reason of his physical condition, we surely ought to have his deposition, and therefore we are insistent upon the right, fairness, and justice to the respondent to have Leake's deposition taken.

The VICE PRESIDENT. The Chair thinks this is a matter that ought to be submitted to the court. It seems to the Chair, from the statement and the telegram to the Chair, that Mr. Leake could come to Washington if he was accompanied by a nurse. It seems to the Chair that it is a question for the court to determine whether or not they want to ask him to come to Washington accompanied by a nurse, or to authorize the deposition to be taken, or to take the position of the House managers with reference to the reading of the deposition already taken.

Mr. CLARK. Mr. President, may we have the telegram read again?

The VICE PRESIDENT. The clerk will read the telegram.

The legislative clerk read the telegram, as follows:

> Hon. JOHN N. GARNER,
> *Vice President of United States and President of Senate,*
> *Washington, D.C.:*
>
> Mr. Leake, under subpena Louderback trial, quite weak physically, due age and cerebral arteriosclerosis. Been his family doctor many years. Travel to Washington impractical, but if imperative should be accompanied by a nurse. Please instruct.
>
> RUSSELL C. RYAN, M.D.,
> *Fairmont Hotel.*

The VICE PRESIDENT. The Sergeant at Arms advises the Chair that he could wire to San Francisco and ask that Mr. Leake come to Washington accompanied by a nurse. What is the pleasure of the Senate?

Mr. BRATTON. Mr. President, if it be in order, I move that the Vice President be authorized to arrange for Mr. Leake to attend the trial accompanied by a nurse if that is deemed necessary.

The VICE PRESIDENT. Without objection, that order will be issued. Counsel will proceed with the cross-examination of the witness Brown.

Cross-examination of Francis C. Brown (continued):

By Mr. LINFORTH:

Q. Mr. Brown, at the interview had with Judge Louderback——

Mr. LA FOLLETTE. Mr. President, will counsel for the respondent speak louder? It is impossible to hear him in this part of the Chamber.

Mr. HEBERT. Mr. President, may I suggest that counsel stand near the center of the Chamber, so that when the witness answers the interrogatories we may hear what he says?

The VICE PRESIDENT. Counsel will kindly comply with the suggestion of the Senator from Rhode Island, and both counsel and the witness will endeavor to speak louder so they may be heard.

By Mr. LINFORTH:

Q. Mr. Brown, at the interview had with Judge Louderback on Thursday, March 13, did Judge Louderback, in substance, say to Mr. Thelen, Mr. Marrin, and yourself that

inasmuch as he had appointed Mr. Strong at the solicitation of you gentlemen he had sent for you to advise you what had happened since?—A. He did.

Q. And after he had advised you of what had happened after the appointment, did he then, in substance, say to each one of you that it would be entirely agreeable to him for you gentlemen to dismiss the proceeding then pending before him and in that way get rid of the unfortunate situation that had arisen?—A. He did not advise us of everything which had happened subsequent to the appointment of Mr. Strong. He did, however, inform us that the petition could be dismissed if desired. That, however, was impossible, due to the urgent need for the appointment of a receiver to take charge of this company's affairs and to stave off attachments and other threatened legal proceedings.

Mr. LINFORTH. I move to strike out the last part of the answer of the witness as in no way responsive to the question.

The VICE PRESIDENT. The Chair is of the opinion that this is a very intelligent jury before which the case is being tried. The extra remarks by the witness hardly would influence the Senate of the United States in the trial. However, if counsel desires to submit it to the membership of the court, the Chair will do so.

Mr. LINFORTH. I am perfectly satisfied with the ruling of the Chair. I may add, Mr. President, that my examination will be shortened considerably if the witness will answer the questions as directly as possible upon cross-examination.

The VICE PRESIDENT. The witness will answer the questions as directly as possible.

By Mr. LINFORTH:

Q. Mr. Brown, what did Judge Louderback say at that time, if anything, with reference to you gentlemen making an investigation as to who Mr. Hunter was?—A. He told us he would allow us from the time of the interview, which was approximately noon, until 4 o'clock in the afternoon to ascertain if there existed anything about Mr. Hunter's past which we could submit to him as a legal reason why he should not be appointed, but he added that he was not allowing us the privilege of saying yes or no at our desire.

Q. And did he thereafter, and before he appointed Mr. Hunter, again communicate with you to ascertain whether or not you had any objection to Mr. Hunter?—A. About 3:30 or a quarter of 4 in the afternoon, I believe, I received a telephone call from the judge's secretary, in response to which I spoke to the judge personally over the telephone.

Q. Did you at that time advise him as to whether or not you and your associates had ascertained if Mr. Hunter was a proper person to be appointed receiver?—A. I told the judge that I had ascertained nothing which I could advance as a legal reason why Mr. Hunter should not be appointed, but that I would not under the circumstances consent to Mr. Hunter's appointment.

Q. Did you at that time say to the judge, and this before he appointed Mr. Hunter, that he was probably a competent man as far as you could ascertain?—A. I said that in effect; yes.

Q. Did you at that time consent to his appointment?—A. I did not.

Q. Did you at any time thereafter, and before he was appointed, consent to his appointment?—A. I never at any time consented to the appointment of Mr. Hunter.

Q. Is your recollection positive on that question?—A. My recollection is very positive.

Q. I hand you a paper filed in the matter of Russell-Colvin & Co. on the 7th day of March 1931 and which is entitled "Application of De Lancey C. Smith and Francis C. Brown for allowance of compensation"; and I call your attention to the signatures on the third page over the word "petitioners", and ask you whose signatures those are.—A. The signature of De Lancey C. Smith written by him, and the signature of Francis C. Brown written by Mr. Smith.

Q. I call your attention to the verification before Lulu P. Loveland, appearing on the next page, and ask you if that is the signature of De Lancey C. Smith to that verification.—A. That is the signature of De Lancey C. Smith.

Q. And did you prepare this petition?—A. I aided in the preparation; yes.

Q. At the time you signed it, and at the time your partner swore to it, did you know the contents of it?—A. I did not sign it personally. I knew the contents of it in substance, however.

Q. Is the signature on page 3, "Francis C. Brown", your signature?—A. It is written in the handwriting of De Lancey C. Smith, and it is not my signature.

Q. But you did know the contents of that paper prior to its filing, did you not?—A. I knew the general nature and contents of the paper; yes.

Q. Calling your attention to the following language on page 2—

> That all the services rendered by petitioners and shown in schedule A were rendered for the benefit of and did benefit the administration of the estate of the defendant by the receiver—

And then turning to that exhibit and calling your attention to page 8, under date of March 13, detailing the services which you had rendered, I call your attention to the following:

> I also discussed various features of the receivership with the attorneys for other creditors and gave my approval to the appointment of H. B. Hunter as receiver of the company's affairs.

Were you aware of that language in that petition at the time it was filed?

A. I cannot say whether or not I was aware of that language in the petition at the time it was filed. It is not, however, meant to say or to be construed as any consent on my part to the appointment of Mr. Hunter.

Just a minute; if I may explain my answer, I can point out how I know this to be true.

Subsequent to the appointment of Mr. Hunter a petition was filed by Mr. Addison G. Strong, represented by other attorneys, in which he sought to revoke the order removing him, and setting aside the appointment of Mr. Hunter as his successor. At that time Mr. Morse Erskine, one of the then attorneys for Mr. Hunter, came to me with a written—typewritten, prepared form of consent to Mr. Hunter's appointment, and requested my signature to it on behalf of the defendant corporation. The original of that document was delivered to Mr. LaGuardia at the time of the committee hearing in San Francisco, and it is unsigned, and it is on the stationery of Keyes & Erskine. That I refused to sign for the reason, as I stated to Mr. Morse Erskine, that it was entirely inconsistent with the position which I had theretofore taken; and inasmuch as I considered the removal of Mr. Strong wholly unjustified and outrageous, I would not sign it.

Mr. LINFORTH. Mr. President, I move to strike out the entire answer of the witness commencing with the paper that he gave to Mr. LaGuardia as in no way responsive to the question that I have asked him. I am directing my inquiry at the present time to the meaning of the language contained on page 8 of the statement that I called to his attention.

The VICE PRESIDENT. The Chair recalls that the witness suggested that he might be permitted to explain his answer. It seems to the Chair that counsel at that time should have objected to the explanation. However, the Chair does not see any reason why that part of the answer should not be stricken out. He calls attention, however, to the fact that if counsel on the part of the respondent permits the witness to explain his answer, he would seem estopped from asking to have it stricken out.

Mr. LINFORTH. May I add, Mr. President, that in courtesy to the witness and in courtesy to the court itself I did not desire to interrupt the witness in the middle of the answer; but if it is the wish that where the witness is, in the opinion of counsel, not responding to the question, we should interrupt, I shall be glad to follow that course in the future.

The VICE PRESIDENT. That part of the answer will be stricken out.

By Mr. LINFORTH:

Q. Were you aware, at the time this petition was filed, that it contained this language?

And I also discussed various features of the receivership with the attorneys for other creditors, and gave my approval to the appointment of H. B. Hunter as receiver of the company's affairs.

A. I have no specific recollection of that language. The first time that it was called to my attention was at the committee hearing. I did, however, have general knowledge of the contents of the entire petition, together with the exhibits, at the time it was filed.

Q. Did you dictate this portion of the petition that I have read to you?—A. It is entirely possible that I did. I do not remember at this time.

Mr. LINFORTH. Mr. President, we offer at this time, as part of the cross-examination of the witness, the document to which I have just referred.

The VICE PRESIDENT. It will be filed as part of the record.

By Mr. LINFORTH:

Q. Yesterday you referred to a conversation which you had with the receiver and Mr. Morse Erskine before the application for fees had been presented to Judge Louderback, and if I understood you correctly at that time you stated that you people had suggested as attorney fees twenty-five or thirty thousand dollars. Merely for the purpose of refreshing your memory, was the amount that you suggested as attorney fees greater than that?—A. I do not believe so.

Q. Did you not suggest at that time $35,000 as attorney fees?—A. I personally made no suggestion. The suggestion, however, was made by Mr. Smith, and it was my recollection that the fee was either $25,000 or $30,000.

Q. Was Mr. Short present at that conversation?—A. I believe he was. He did not participate in the conversation, however.

Q. Were you in court March 17, 1931, when the application for fees was on hearing?—A. If that is the date on which the testimony was being taken, I was present; yes.

Q. That is the last day of the hearing, Mr. Brown, according to my information.—A. Yes; I was present.

Q. And was your partner, De Lancey Smith, also present at that time?—A. Mr. Smith was present also.

Q. And was Mr. Thelen also present at that time?—A. Mr. Thelen was present also.

Q. Was Mr. Marrin, Mr. Thelen's partner, also present?—A. Mr. Marrin was not present. He was absent from the city.

Q. Were you present in court at that time on that hearing when a Mr. Scampini was there, representing certain creditors, and objecting to the allowance of fees?—A. I was.

Q. Were you there when Mr. Scampini stated to the court the arrangement that the parties had entered into, namely, that $46,250 should be allowed to Short & Erskine, $8,750 to your firm and to Messrs. Thelen and Marrin, and $20,000 to the receiver, in addition to the monthly allowance that he had already received?—A. I believe that is the statement, in substance, which he made; and I was present at the time.

Q. And you heard him make that statement, did you?—A. Yes; I did.

Q. Did you say anything in objection to that statement at the time that statement was made to his honor, Judge Louderback?—A. I did not.

Q. Did you hear Judge Louderback say, after that arrangement and statement had been made by Mr. Scampini, "I see Mr. Thelen, and I believe Mr. Brown is also here. You are satisfied with what has been done?" Did you hear the judge make that statement at that time?—A. I heard him make a statement to that general effect; yes.

Q. And when he made that statement, did either you or your partner, Mr. Smith, say "Yes, sir"?—A. My recollection is that Mr. Smith made the reply—said "Yes."

Q. And after Mr. Smith, in your presence and hearing, had answered "Yes, sir", did you then hear the court say this:

And I presume these arrangements are satisfactory to both of you gentlemen?

Referring to you, as well?

A. The arrangements were not satisfactory to me, and I did not——

Q. Just a moment; answer the question.—A. I did not understand his question to mean that.

Mr. LINFORTH. I submit that the answer is not responsive, and I move to strike it out.

The VICE PRESIDENT. Answer the question directly.

Mr. Manager BROWNING. Mr. President, I object to the question if counsel is going to insist on giving his construction of whom the judge referred to, when he did not say whom it was that he referred to. I think it is unfair to the witness for counsel to insist on his construction of what the judge said.

The VICE PRESIDENT. The witness can answer whether or not he gave the answer suggested by counsel.

Mr. LINFORTH. The question, Mr. President, is this: Did he, at that time, hear the respondent say:

And I presume these arrangements are satisfactory to both of you gentlemen?

Referring to the witness and to his partner, Mr. Smith.

Mr. Manager BROWNING. Mr. President, that is the part of the question to which I object, because the judge never said to whom he referred.

The VICE PRESIDENT. The objection is sustained. counsel cannot conclude that the judge had in view the witness because he said "both of you gentlemen."

Mr. LINFORTH. I will follow the suggestions of the Vice President, and I will read from the record, with your permission (p. 9).

Did you hear Judge Louderback at that time make this statement?—

I will allow the sums which have been mentioned—$20,000 to Mr. Hunter in addition to the money he has already received in monthly payments; I will allow $46,250 to the attorneys, John D. Short and Erskine & Erskine; and I will allow to the plaintiff's attorneys and to the defendant's attorneys the sum of $8,750; and I presume everybody present signifies their acceptance of that arrangement, and all join in its approval. I see Mr. Thelen, and I believe Mr. Brown is here. You are satisfied with what has been done?

Mr. BROWN. Yes, sir.

The COURT. And I presume these arrangements are satisfactory to both of you gentlemen?

Mr. BROWN. Yes, sir.

Did you hear the court make those announcements, and did either you or your partner answer as shown by the record that I have just read from?

The WITNESS. I heard the court make a statement to that effect, and I heard, according to my recollection, Mr. Smith make the reply which the record indicates was made by myself.

Q. In other words, what I have read to you agrees with your present recollection, except that it was Mr. Smith instead of Mr. Brown that made the replies, "Yes, sir"? Is that correct?—A. In substance and effect it agrees; yes.

Q. Mr. Smith was at that time, and still is, your partner?—A. Mr. Smith was at that time, and still is, associated with me, or, rather, I am associated with him jointly in this case.

Q. And you and Mr. Smith, and Messrs. Thelen and Marrin, were the attorneys to whom the court awarded the $8,750?—A. Joint compensation for all parties; yes, sir.

Q. After this sum of $46,250 was allowed, was there a further application for fees made on behalf of Keyes, Erskine & Short?—A. According to my recollection, there was.

Q. How much was that application for; do you recall?—A. $5,000 for the attorneys, and around $8,000 for the receiver.

Q. Merely to refresh your memory, if I may, was the application for attorney fees $7,500 instead of $5,000?—A. My recollection is that it was $5,000. It may, however, have been larger.

Q. Did you know of the making of that application?—A. I was requested to consent to it, and I declined to do it.

Q. Were you present in court when the application came on for hearing?—A. I was not.

Q. Had you received notice of the time of the hearing of the application?—A. I did.

Q. And you did not attend?—A. I did not attend; no.

Q. You say the court at that time allowed $5,000 on that application?—A. That is the information which I subsequently received.

Q. Did you and your partner receive part of that $5,000?—A. I did not receive any part of it. I understand that Mr. Smith received some portion of it from Keyes & Erskine.

Q. Mr. Smith was your partner——A. Mr. Smith——

Q. And your partner received some part of it, but not you. Is that what you say?—A. Mr. Smith and I were associated in the case. We were not in a general partnership.

Q. Was not that part of the understanding that was entered into by you people at the time the $46,500 was allowed, namely, that if any further applications were made and granted, your firm, and the firm of Thelen & Marrin, would receive 20 percent of what the court allowed to Keyes & Erskine and Short?—A. That is not a correct statement of the understanding.

Q. You say there was no such understanding?—A. I say that is not a correct statement of what the understanding was.

Q. I am asking you, was there such an understanding?—A. Not an understanding such as you have stated; no.

Q. Were you in court at the time the application for the original fees was on hearing, and did you at that time hear Mr. Erskine make the following statement to the court, page 6 of the record?—

Mr. ERSKINE. We might add, if Your Honor please, in order to be entirely candid with the court, in order to bring about this arrangement we have agreed with the attorneys for the plaintiff and defendant that if any additional compensation is allowed us in this estate for services to be rendered in the future we will pay them 20 percent up to the sum of twenty-five hundred dollars. We want the court to be fully advised of that arrangement in order to be entirely candid about it.

Did you hear that statement made to the court at that time?—A. I do not remember hearing that statement. That, however, as you just read it, is substantially a correct statement of the understanding.

Q. And did your firm, and the firm of Thelen & Marrin, to your knowledge, receive 20 percent of the additional $5,000 subsequently awarded by the court to Keyes, Erskine & Short?—A. My best recollection is that the remittance was made in the sum of $1,000 to Mr. Smith, who in turn made some settlement with Thelen & Marrin.

Q. Do you tell the Senate and His Honor that you accepted that money knowing that the original allowance of $46,250 was excessive?—A. I personally did not accept any of the money. However, my definite feeling and conviction, and my present feeling is——

Mr. LINFORTH. Just a moment. I submit the witness is not responding to my question. May my question be read?

The VICE PRESIDENT. The reporter will read the question.

The Official Reporter read as follows:

Q. Do you tell the Senate and His Honor that you accepted that money knowing that the original allowance of $46,250 was excessive?

Mr. BROWNING. Mr. President, we except to the question, as the counsel undertakes to put into the mouth of the witness the statement that he did accept the money, and I insist that he has a right to deny that in his answer. His answer was in response to his right to deny that he ever received that $1,000.

Mr. LINFORTH. Mr. President, may I add that the witness has stated that while he did not receive the money, his partner received and retained half of it and turned the other half over to Thelen & Marrin?

Mr. BROWNING. No; that is not in the record.

Mr. LINFORTH. I submit that is his answer.

The VICE PRESIDENT. You can get the record, but I think counsel is mistaken. I think the witness said part of it, not all of it.

Mr. LINFORTH. May I withdraw the question for the time being?

By Mr. LINFORTH:

Q. How much of that 20 percent, or $1,000, did your partner retain?—A. I do not know; and, if I may add, several times I have made the observation that Mr. Smith and I were not general partners. You are referring to him as my partner. That is the understanding.

Q. You and he were partners insofar as the Russell-Colvin matter was concerned, were you not?—A. Mr. Smith associated me in the case with him at the time he departed for New York.

Mr. LINFORTH. I submit the witness is not answering the question.

The VICE PRESIDENT. I think that is a fair answer.

By Mr. LINFORTH:

Q. Did you receive a portion of the $8,750 that was allowed to the attorneys for the plaintiff and the defendant in that matter?—A. I did.

Q. Did you receive the full half of what was allowed to your firm, or the portion which your firm received, of the $8,750?—A. I believe I did.

Q. I hand you what purports to be a typewritten copy of a letter of date November 30, 1931, from Keyes & Erskine, addressed to your partner, De Lancey C. Smith. Had you, on or about that date, seen that letter [handing witness letter]?—A. I do not recall that I did see it. I knew, however, that the remittance had been forthcoming.

Q. But you did not know it came in the letter to which I have called your attention?—A. I knew that it came. I do not recall—I do not believe I ever saw the letter, Mr. Linforth.

Q. Yesterday in your testimony you made some reference to the employment of Milton Newmark in the bankruptcy proceeding. Do you recall that?—A. I do.

Q. I think you said that Mr. Hunter preferred Mr. Newmark because, on account of his friendship, he would like to throw something his way. Do you recall making use of that expression?—A. No; I did not use that expression. I can tell you what I said.

Q. Pardon me. You did not make use of the expression that Mr. Hunter preferred Mr. Milton Newmark because he would like to throw something his way?—A. I said that Mr. Morse Erskine told me that Mr. Hunter would like to throw something Mr. Newmark's way; yes.

Q. When Mr. Newmark was employed, was it not understood between all of you, your firm, the Thelen & Marrin firm, and the attorneys for the receiver, that whatever his compensation should be, the attorneys would pay it, and not the Russell-Colvin estate?—A. That was understood.

Q. And is it not a fact that the fees that were paid to him were paid by the attorneys out of the allowance which the court had made to them?—A. I do not know what fees he received other than from Mr. Smith and myself. He received the proportion which we agreed to pay him.

Q. You do know that no fees were paid to him out of the Russell-Colvin estate?—A. My recollection is that no express court order allowing him expressly a fee was made.

Q. Were you present in court upon the hearing to which I have called your attention, on the 17th of March, when the application for fees was on hearing, and when it was stated to the court that the compensation of Mr. Newmark would be taken care of by the attorneys out of their allowances, and would not be a charge against the estate?—A. I have no recollection of that statement being made. It may have been made. There was no secret about the arrangement with Mr. Newmark.

Q. Were you in court and did you hear the court at that time make this statement?—

That leaves nothing in question except the thousand dollar claim which is pending; and it is understood, if Mr. Newmark makes any claim, the firm of Erskine & Erskine will see that it is properly attended to.

Did you hear His Honor make that statement?—A. I do not recall the statement. It may have been made, however.

Q. Was there not a statement made at that time, in the presence of His Honor, and before His Honor made this re-

mark, to the effect that the compensation of Mr. Newmark would not come out of the Russell-Colvin estate?—A. I do not recall that the subject of Mr. Newmark was mentioned at that hearing at all.

Q. You stated yesterday that Judge Louderback informed you and your associates on the meeting of March 13 that he had suggested various attorneys to the receiver from which he might select his counsel. You have that in mind, Mr. Brown? And among those counsel you mentioned Pillsbury, Madison & Sutro, Sullivan, Sullivan & Roche, and Cushing & Cushing. Do you recall that?—A. They were the firms which, it is my recollection, were mentioned by the judge.

Q. Yes, sir. Did the judge tell you that he had recommended those firms to the receiver before he made any order removing the receiver?—A. At the time he told us that, he had not removed the receiver.

Q. Did the judge at that time, in the same connection, tell you that the receiver had refused to accept his suggestions in regard to the employment of any of those men?—A. He did.

Q. And did he also at that time tell you that the receiver told him that he would employ no one except the regular attorneys for the San Francisco Stock Exchange?—A. He did not put it that way.

Q. What did he say in that regard?—A. He said that everything was very pleasant between the receiver and himself until they came to the subject of the receiver's counsel, and that Mr. Strong would have no one except Mr. McAuliffe.

Q. Of course, you knew that Mr. McAuliffe was a member of the firm who were the regular attorneys for the San Francisco Stock Exchange?—A. Everyone knew that.

Q. When the judge made the order appointing Mr. Strong as receiver, you said it was about 5 o'clock?—A. My recollection is that it was around 5 o'clock, sometime.

Q. And at that time the judge knew from what was said, did he not, that the receiver was then and there going to qualify?—A. I do not believe any statement was made to that effect.

Q. At that time you had presented the bond to the judge for his approval, had you not?—A. Yes.

Q. After the bond was presented to the judge for approval and after he had approved it, did not the judge then say to Mr. Strong that after he qualified he wanted to see him?—A. He said, in substance, "After the business of qualifying is over, I want you to come back and see me."

Q. You know that Mr. Strong did not return that day to see the judge, do you not?—A. That same afternoon?

Q. Yes; that same afternoon.—A. That is my opinion; yes.

Q. Well, did you not tell us yesterday that he went down town with you on the car?—A. That is correct.

Q. You also said yesterday that the various petitions and the various orders made in this proceeding were all approved or O.K.'d. by your firm; is that right?—A. No, sir; a great number of them were consented to by us; a few of them were not consented to by us.

Q. But most of them were examined by your firm and O.K'd by you?—A. Yes; that is correct.

Q. Is that also the situation so far as Thelen & Marrin are concerned, who were the attorneys for the plaintiff?—A. I believe that is true also.

Q. So that the judge took the precaution to require all of these papers to be O.K'd by both of you before he acted upon them, did he not?—A. If you are asking my opinion, my opinion was that the judge was endeavoring to compromise us, in view of the dispute which had arisen between Mr. Strong and himself, and in view of our attitude concerning Mr. Strong's removal.

Q. But you understood, did you not, that the judge had required this sort of checking up by you people representing the defendant and Thelen & Marrin representing the plaintiff?—A. Mr. Morse Erskine or Mr. Hunter, one or the other, gave me the only information I had about it.

Q. Was the information he gave you, that the judge desired both of you to check up on all proceedings of that kind that took place?—A. The information or the statement which one or the other of these men made to me was that the judge had requested them to submit all papers to us for our consent or rejection before they were filed.

Q. Do you know how many petitions prepared by Keyes, Erskine & Short were submitted to you for your approval? I do not mean to be exact, but about how many?—A. Well, I do not think I could give you a fair estimate; it was well over a hundred.

Q. Well over a hundred? Would I be wrong in saying over 300?—A. In my opinion you would.

Q. I understood you to say yesterday that the reputation of Mr. Short was good. Is that correct?—A. I personally considered Mr. Short to be a man of good character.

Q. I understood you to say that you did not consider the reputation of Mr. Herbert Erskine to be good?—A. That question was asked me, and that is my opinion; that was my answer.

Q. You made no reference to his partner, Morse Erskine?—A. No.

Q. Do you consider him a reputable attorney?—A. I prefer not to answer the question.

Q. How long have you known Mr. Herbert Erskine?—A. I have either known or known of Mr. Herbert Erskine ever since I have been in San Francisco.

Q. Did you know him when the firm was Keyes & Erskine?—A. I did.

Q. Did you know Mr. Keyes?—A. I knew Mr. Keyes very well.

Q. Was he one of the most reputable lawyers in San Francisco?—A. Mr. Keyes was one of the most reputable lawyers in San Francisco.

Q. And how many years had Mr. Herbert Erskine been his partner?—A. For a great many years; long prior to my coming to San Francisco.

Q. And he was his partner at the time that Mr. Keyes died, was he not?—A. He was.

Q. Mr. Herbert Erskine, whom you speak of, was one of the directors of the bar association of San Francisco in 1932, was he not?—A. He may have been; I do not know.

Q. One of the governors, I think, is the proper term. You knew Mr. Erskine when Keyes & Erskine were the attorneys for the Humboldt Bank in San Francisco?—A. I knew Mr. Keyes quite well. I knew Mr. Erskine slightly at that time. I met him several times.

Q. But you knew him when that firm represented the Humboldt Bank, did you not?—A. Mr. Keyes was president of the Humboldt Bank and majority stockholder of the bank.

Q. After Mr. Keyes' death you knew, did you not, that Mr. Herbert Erskine was one of the attorneys for the Bank of America in California?—A. I knew that he was employed in connection with some of the stock of the Humboldt Bank as attorney for the Bank of America.

Q. How long, to your knowledge, has Mr. Herbert Erskine been one of the attorneys for the Bank of America in California?—I believe between 1928 and 1932. I do not know whether he is still attorney for the bank or not.

Q. Have you had any personal differences with him?—A. I personally have not had any differences with him, but I have known a great many people who have.

Mr. LINFORTH. I move to strike that out as not responsive to my question.

The VICE PRESIDENT. The witness will answer the question direct.

Q. (By Mr. LINFORTH.) Have you had any personal differences with him?—A. I have never had any personal differences with him.

Q. Has your partner, to your knowledge, had any personal differences with him?—A. My partner, Mr. Smith, used to be a very close friend of Mr. Erskine.

Q. I am asking you, to your knowledge, has your partner had any differences with Mr. Herbert Erskine?—A. If you are referring to Mr. Smith, not to my knowledge. He has never had any differences.

Mr. LINFORTH. I think that will conclude the cross-examination, Mr. President.

The VICE PRESIDENT. Do the managers on the part of the House desire to further examine the witness?

Mr. Manager BROWNING. Yes, Mr. President.

Redirect examination by Mr. Manager BROWNING:

Q. Mr. Brown, when the respondent suggested that the petition in the Russell-Colvin case could be dismissed, will you state why it could not have been dismissed at that time?—A. For two reasons: One was that it was absolutely necessary to have a receiver in charge of that company's affairs on account of the fact that a large number of margin customers were asking delivery of their securities and tendering payment on their balances. If those deliveries had been made, it would have resulted in a great many preferences. Other legal proceedings were threatened, such as attachments and replevin suits, and so on. We contemplated at one time filing a petition for the appointment of a receiver in the State court, but concluded against that, in view of the fact that we felt that bankruptcy proceedings would follow and a receiver in bankruptcy would be appointed who would supersede the State court receiver. Mr. Marrin and I discussed the matter, and concluded that we would make an issue of the case and see it through.

Q. Did the respondent know at that time that there was danger of a bankruptcy proceeding?—A. He had asked us if it was not possible or probable that a bankruptcy proceeding would supersede a Federal equity receivership proceeding.

Q. What effort was made to get you to consent to the appointment of Mr. Hunter as receiver?

Mr. LINFORTH. One minute. We object to that as being thoroughly incompetent and unless connected with the respondent, hearsay, and not binding on him.

Mr. Manager BROWNING. In view of the cross-examination, I think it is thoroughly competent to let the witness explain the very thing that counsel for respondent brought out.

Mr. LINFORTH. I submit he has a right to explain anything, but his explanation can only be by means and by ways of competent testimony.

The VICE PRESIDENT. The witness will not testify to hearsay, if he has not the information of his own knowledge.

By Mr. Manager BROWNING:

Q. My question is, What effort was made to get you to consent to the appointment of Mr. Hunter as receiver and who made the effort?

Mr. LINFORTH. We make the same objection, that it is calling for his opinion or conclusion as to whether there were efforts or not, not limiting the question to anything that took place with reference to the respondent or in his presence or hearing. We are not bound by what this witness or any other witness may have done out of the presence and out of the hearing of the respondent.

The VICE PRESIDENT. The Chair stated before—and he reiterates now—that the jury trying this case is an intelligent jury, and the Chair does not believe any statement made by the witness in response to a direct question will influence the jury.

Q. (By Mr. Manager BROWNING.) In order to satisfy counsel, I will ask it in this way: What effort did the respondent make with you to get you to consent to the appointment of Mr. Hunter as receiver?—A. In the late afternoon of Thursday, March 13, after Mr. Strong had been removed, I talked to the respondent over the telephone, and he asked me if I would consent to Mr. Hunter's appointment. I told him that I would not consent to Mr. Hunter's appointment. While I found no objection which I could advance as a legal reason why he should not be appointed, I could not, in view of the fact that I considered Mr. Strong's removal unjustified, consent to the appointment of a successor.

Q. After that time, who else made an effort with you, if anybody did, to get you to consent to the appointment of Mr. Hunter as receiver?

Mr. LINFORTH. One moment. We object to that as incompetent, as hearsay, and not binding on the respondent.

The VICE PRESIDENT. The objection is sustained.

By Mr. Manager BROWNING:

Q. After that time, did the counsel for the receiver request of you to consent to the appointment of Mr. Hunter?—A. They did.

Q. When the fee of $8,750 was allowed, was that to you and your associate, Mr. Smith, or were you getting a division of that?—A. That $8,750 was the entire allowance for Messrs. Thelen & Marrin and Mr. Smith and myself.

Q. And what part of it came to you and your associate, Mr. Smith?—A. Approximately 50 percent—slightly over 50 percent, I believe.

Q. At the time you saw the respondent about noon the day that Mr. Strong was discharged as receiver, and he mentioned to you that the firms that he had submitted to Mr. Strong as his suggestion for attorneys, did he at that time mention the fact that he had suggested John Douglas Short?—A. He told us that he had suggested the other attorneys, but he did not tell us that he had suggested Mr. Short, and Mr. Short's name was never mentioned nor were the names of Keyes & Erskine.

Q. Did you, one Monday in March, in company with other attorneys and Mr. Strong, go to the chambers of the respondent and present to him a petition for receivership?—A. Not on Monday.

Q. Why were the defendants not the same in the two petitions that were filed on Tuesday, March 11, 1930?—A. My information on that is indirect.

Mr. LINFORTH. Just one second. If the information is based on hearsay, Mr. President, we object to it as being incompetent.

Mr. HANLEY. The record is the best evidence. Both of the complaints are here with the clerk and the jury can see them without his opinion.

The VICE PRESIDENT. The objection is sustained.

By Mr. Manager BROWNING:

Q. We will not insist on it if the witness did not know of his knowledge. In either of your conferences with the respondent, while Mr. Strong was present, did he say this or this in substance, "If I appoint you, will you consent to take my suggestion as to who the attorney shall be?"—A. He did not.

Q. Did you and those associated with you in filing the case fail to make the bond the first day the petition was presented to the respondent?—A. Will you have the question repeated?

Q. Did you and those associated with you fail to make the bond required by the court the first day the petition was presented to the respondent?—A. No. The first day the petition was actually presented to the respondent was on Tuesday, and on that same day the bonds were procured. We were, however, unable to procure a plaintiff's bond in the sum of $50,000, and the respondent, reduced the requirement to $10,000.

Q. Did you and those associated with you in filing the petition request the respondent to keep the clerk's office open after closing hours?—A. I do not believe so. I think that request was made directly of the clerk, Mr. Maling.

Q. Did you show an unusual interest in connection with this case, and was there great excitement at the time the case was filed? If so, on whose part was it?

Mr. HANLEY. We object to the question as calling for his opinion or conclusion as to whether he showed unusual interest.

The VICE PRESIDENT. The witness may state the facts.

Mr. Manager BROWNING. I have read the exact allegation made by the respondent as to the fact in this case, and I request this witness, who was present throughout the proceeding, to state whether or not that is the fact or the condition.

The VICE PRESIDENT. Let the witness state any facts within his knowledge.

By Mr. Manager BROWNING:

Q. Did you or those associated with you show unusual interest in connection with this case and was there great excitement? If so, on whose part?

Mr. HANLEY. We object to the question as being improper and incompetent and calling for an opinion or conclusion of the witness as to what the great interest was and as to whether there was great excitement.

The VICE PRESIDENT. The Chair thinks it is for the court to determine whether there was great excitement. The witness may state the facts.

Mr. Manager BROWNING. With all deference, I want to make this statement. The question I have read to the witness is the exact allegation made by the respondent of the conditions surrounding the filing of this case, and I have read it in his language. I desire to ask the witness if that is the fact.

The VICE PRESIDENT. Let the witness state what the facts are, and whether that constitutes great excitement is for the court to determine. The respondent would have to state the facts in order to sustain his allegation.

By Mr. Manager BROWNING:

Q. You may answer the question.—A. We proceeded in a quiet and orderly manner into the judge's anteroom. We spoke to his secretary and asked for an appointment. We spoke in a quiet and orderly manner to the judge, and, in my opinion, I personally was not excited and I observed no excitement on the part of Mr. Thelen or Mr. Marrin or Mr. Strong. I did, however, observe some excitement on the part of some of the court attachés.

Q. On the afternoon that Mr. Strong was appointed and left to qualify, state whether or not the respondent at that time told him to return that same day.—A. He did not.

Q. To your knowledge, did Mr. Strong pick Heller, Erhmann, White & McAuliffe as his attorneys in this case prior to his appointment?

Mr. HANLEY. We object to that as calling for his conclusion or opinion and not binding upon the respondent.

Mr. Manager BROWNING. I said, "State whether or not, to your knowledge."

The VICE PRESIDENT. Let the witness state what is within his knowledge.

The WITNESS. Not to my knowledge.

Mr. Manager BROWNING. That is all.

The VICE PRESIDENT. The Chair appoints the Senator from Utah [Mr. KING] to preside over the court for the balance of the day.

(Thereupon Mr. KING took the chair.)

Recross examination by Mr. LINFORTH:

Q. Just a question or two. Did you represent any creditor or creditors of the Russell-Colvin Co.?—A. I do not believe so.

Q. Do you recall whether or not your firm were creditors of that company?—A. Yes. Mr. Smith was a creditor.

Q. Just one other matter and I am through. Counsel asked you as to why you could not have dismissed this petition upon which the receiver was appointed, in accordance with the judge's suggestion. You have that in mind, have you?—A. Yes.

Q. How long would it have taken you to have filed a new petition?—A. We had a new petition all prepared and it would not have taken very long.

Q. You could have dismissed this petition, filed a new one, and had another receiver appointed within 24 hours, could you not?—A. When I say we had another petition prepared, I mean it was a State court petition prepared, but we would not have gotten anywhere by dismissing the first petition, but would have been right back where we started.

Q. How long would it have taken you, after dismissing this particular petition, to have filed another?—A. Several hours, I suppose; half a day.

Mr. NORRIS. Mr. President, I send to the desk a question I would like to have propounded to the witness.

The PRESIDING OFFICER. The clerk will read the question.

The legislative clerk read as follows:

Give us the entire amount of expense of the receivership, itemized so far as you can, and the nature and amount of the services rendered in each case.

The WITNESS. The fees which were awarded to the attorneys for the receiver were, first, $46,250, and a second allowance of $5,000. The first allowance to the receiver personally, Mr. H. B. Hunter, was $33,000, including the $1,000 per month which he had theretofore been drawing for a period of 13 months. In October 1931 he received a further allowance of $7,500. The fees which were allowed to the attorneys for the plaintiffs, Messrs. Thelen & Marrin and Mr. Smith and to myself, totaled $8,750.

In addition to that there were other expenses, accounting expenses for services rendered by accountants employed by the receiver, and other administrative expenses, the exact figures of which I could not give you. I think the accounting expense was approximately $14,000. That is my recollection. Those figures are available, I believe, in the report which was filed by the receiver, a copy of which was printed in the committee report of the House of Representatives.

By Mr. Manager BROWNING:

Q. What amount of cash, if you know, was taken in by the receiver in this case, collected from all courses?—A. I made a memorandum according to my best recollection, which I believe is fairly accurate. There was received from the sale of the stock of Coen & Co. $25,000. The sale of the stock exchange seat brought $75,000. The sale of the stock and debentures of the Consolidated Paper Box Co. brought approximately $115,000. The sale of miscellaneous assets brought approximately $9,000. In addition to that there was some cash in bank or on hand or turned back from the brokers who had liquidated more than the amount needed to settle their indebtedness. I think that was approximately $11,000. Then there was the sale of the Anchorage Power & Light securities, the exact amount of which I have not at hand.

Q. Can you give what the total is of the items you have enumerated?—A. Two hundred and thirty-five thousand dollars approximately, not including the Anchorage securities.

Q. At the time these initial fees were allowed, had any dividends been paid?—A. Not at that time.

Mr. NORRIS. Mr. President, I did not hear the witness' answer to the question I propounded. I did not hear him tell how much the attorneys for the receivers received.

The WITNESS. The attorneys for the receiver received a first allowance of $46,250 in March or April 1931. Later in the fall of 1931, October or November of 1931, they received a further fee of $5,000, making their total compensation $51,250.

Mr. NORRIS. I call the attention of the witness to a further part of the question: What services were rendered for the various fees? That was included in the question.

The WITNESS. The services which were rendered, as I observed them, consisted of the consideration of a few, approximately 100, petitions which they prepared requesting instructions from the court, authorizing the receiver to make delivery of securities and prescribing the conditions which should be fixed for the delivery of securities under certain circumstances; the preparation of claims, aiding in the preparation of a form of claim which was submitted to the receiver, and which the receiver circulated among the creditors to be filled out in the blank form; the general advice which was given to the receiver as to his own rights, I assume—I personally was not present at all those conferences—and consultations with us and with the receiver concerning the sale of the stock-exchange seat and of the Consolidated Paper Box Co. securities. As I stated yesterday, the sale of the Consolidated Paper Box securities was largely handled by Mr. Smith and a creditor named Littler and by me. The closing negotiations, however, were reduced to writing by the receiver. Then they appeared in court

on a hearing on a number of those petitions and secured a court order, and also prepared the first accounts and the second accounts, and petitions for allowance of fees, and so on.

Mr. LOGAN. Mr. President, I desire to submit three brief questions.

The PRESIDING OFFICER. The Senator will transmit them to the clerk to be read.

The legislative clerk read the first question, as follows:

Do you have any feeling of ill will, prejudice, or malice toward the respondent?

The WITNESS. No.

The legislative clerk read the second question, as follows:

Do you have any feeling or desire in these matters under consideration that the Court of Impeachment shall return the findings one way or the other?

The WITNESS. It is my opinion that the charges which have been made in the case of the Russell-Colvin Co. are justified.

The legislative clerk read the third question, as follows:

Are your feelings toward the respondent kind or unkind?

The WITNESS. My feelings toward the respondent are indifferent so far as he personally is concerned.

The PRESIDING OFFICER. Are there any other questions to be propounded to the witness?

Mr. Manager BROWNING. Mr. President, just one more question:

Q. What proportionate part of the legal work connected with the administration of this receivership was done by the attorneys for the receiver on the one hand, as against the attorneys for the petitioner and the defendant on the other hand?—A. It is very difficult to apportion the services. A great many of the services were handled by both parties at the same time, all working together, in concert. As I recall it, at the time of the first allowances, in April of 1931, the record which was submitted to the court showing the time devoted by the attorneys for the receiver as against the attorneys for the defendant and the attorneys for the plaintiff showed that the latter had put in about 50 percent of the time put in by the attorneys for the receiver, and I believe that the work which was done by Mr. Marrin and Mr. Smith and myself was in many instances of equal importance to the work done by the receiver's attorneys.

Q. What part of the time listed in the reports of the attorneys for the receiver was legal work, and what part of it was clerical work?

Mr. LINFORTH. Just a minute. We object to that as calling for the witness's opinion or conclusion.

The PRESIDING OFFICER. The witness may state if he knows.

The WITNESS. I do not believe I could give you an estimate of how much. I would say that a large part of the work was, in my opinion, clerical work rather than purely legal work.

Mr. Manager BROWNING. That is all, Mr. President.

Mr. LONG. I have a question, Mr. President.

The PRESIDING OFFICER. The question submitted by the Senator from Louisiana will be read.

The legislative clerk read the question as follows:

If you did not agree to that settlement in open court when your partner, Smith, said he did, then why did you not say something?

The WITNESS. The explanation of that is this: It is rather a long explanation:

For several days during the course of that hearing we had been sitting in court observing the way in which the hearing was being directed, and in my opinion the opposition which was being put up was not effective opposition. Then we came back after the noon recess on either the second or the third day, and I was informed by Mr. Smith, in the presence——

Mr. LINFORTH. Just a moment. The President invited us to interrupt when anything was objectionable, Mr. President.

The PRESIDING OFFICER. State the ground of your interruption.

Mr. LINFORTH. We object to the witness stating what Mr. Smith informed him as being hearsay and not binding on the respondent.

The PRESIDING OFFICER. The Chair holds that it is hearsay; but, in view of the question which is propounded, the witness is giving the reasons upon which he acted. Whether those reasons were sound or unsound would be for the court to determine. Proceed.

The WITNESS. I was informed by Mr. Smith, in the presence of Mr. Herbert Erskine, that in our absence the attorney for the objectors to the allowances which were being requested had consented to an allowance of $45,000 for the attorneys for the receiver, $33,000 for the receiver, and $10,000 combined for the attorneys for the plaintiff and the attorneys for the defendant. I stated to Mr. Smith that I considered that to be entirely insufficient insofar as we were concerned, and to be excessive insofar as the attorneys for the receiver were concerned, and he reiterated my view.

Then we went into a conference with Mr. Thelen; and as the judge had stated that no continuance would be allowed for the hearing, and Mr. Marrin, Mr. Thelen's partner, who had done the bulk of the work for their firm, was out of town, and consequently Mr. Thelen had no person whom he could put on the witness stand to testify as to those services, and in view of the fact that there was some question under the authorities as to whether or not the attorneys for the defendant had an absolute legal right to compensation other than a right which might be wholly within the discretion of the court, Mr. Smith concluded, and Mr. Thelen very reluctantly concluded, that the proposal would be accepted.

Then Mr. Erskine came back and said that his brother, Morse Erskine, would not accept the fee of $45,000, but wanted an additional $1,250; and there was only one place to take it from, so they took it from the $10,000 which was to be allowed to Mr. Smith, Mr. Thelen, Mr. Marrin, and myself, cutting our compensations under this proposed settlement to $8,750.

All during this conference, on at least two or three occasions, I had observed either the attorney for the receiver, Mr. Short, and in at least one instance the receiver himself, consulting with the respondent in his chambers either before or after or during the intermission at this hearing; and on account of the fact that we understood that he was a friend—the receiver's attorney, Mr. Short, was a friend—of the judge, and on account of the fact that he had removed Mr. Strong, and on account of the further fact that Mr. Herbert Erskine said that the judge was prepared to make allowances which he suggested, we felt that it would be futile under these circumstances to prosecute an independent inquiry or an independent application, in view of the uncertainty under the authorities as to our own compensation.

Mr. LONG. Mr. President, I have tried to elicit an answer, and probably my question was a little too broad to get it. I send another question to the desk.

The PRESIDING OFFICER. The question will be read.

The legislative clerk read the question, as follows:

In view of your answer, will you please tell me why now you let your partner say that matters were agreeable to you both, and you remained silent? Were you afraid to speak?

The WITNESS. I felt that it was personally entirely unsatisfactory to me, and I was prepared to take my chances on prosecuting my application independently. Mr. Smith, however, felt differently. He felt that he did not want to run that chance, and consequently he felt that he was forced to acquiesce, and that any objection would be futile.

The PRESIDING OFFICER. Are there any other questions?

Mr. LINFORTH. Mr. President, there is a question or two further that we desire to propound to the witness.

By Mr. LINFORTH:

Q. In addition to the amount of assets which you have referred to this morning, how much was collected by the

receiver on accounts and notes due from customers?—A. There was very little collected up to the time that first application was filed.

Q. Was there, in all, $512,944 collected on accounts and notes due from customers?—A. I do not believe so; no.

Q. What amount was collected on accounts and notes due from customers, if you know?—A. I have previously stated that I did not have the exact figures. I do, however, know that there was great delay in prosecuting the collections on accounts receivable.

The PRESIDING OFFICER. The answers should be responsive to the questions. Do not make suggestions.

Q. Then you do not intend, by the answers that you have given, to create the impression that the assets handled by the receiver were only the amounts that you have referred to?—A. The amounts which I have referred to were the principal assets of the general estate. The other collections, I believe, that you are referring to were collections from margin customers, were they not?

Q. Yes, sir. Do you know how much that was that was collected?—A. I could not give you that figure; no.

Q. You also referred to some $10,000 cash on hand. Was that a guess on your part?—A. That was my recollection.

Q. Was the amount over $16,000 instead of $10,000?—A. Over $16,000?

Q. Yes.—A. My recollection is that it was between 10 and 11 thousand dollars.

Q. And instead of being about $10,000 from sale of miscellaneous things, was the amount collected by the receiver from that source over $30,000?—A. The amount collected from the sale of the furniture and furnishings which I referred to as miscellaneous things, as set forth in the receiver's account, was $9,083.61.

Q. Was there $21,870 in addition to that received by the receiver from the sale of miscellaneous assets?—A. What do you refer to when you say "miscellaneous assets"?

Q. Those not specified as accounts and notes due from customers, cash on hand, firm securities, sale of furniture, and sale of stock-exchange seat.—A. It may have been. I do not remember.

Q. Was not the amount actually received by the receiver, including the amount collected on accounts and notes due from customers, over $1,000,000?—A. The amount of the general estate was considerably less than $1,000,000.

Q. Mr. Brown, I am trying to shorten this. Will you please follow my questions and see if you can answer directly?—A. I do not remember the exact figure.

Q. Was not the amount actually received by the receiver over $1,000,000?—A. I do not remember the exact figures.

Mr. LINFORTH. I have no further questions.

Mr. Manager BROWNING. Mr. President, in view of that question, I should like to ask this:

By Mr. Manager BROWNING:

Q. How much of this total amount was actually a part of the estate, and how much did they hold as bailee in relation to bailor?—A. My recollection is that they held well over $1,000,000, according to their book value, of securities as bailee.

Q. What disposition was made of those securities?—A. They were either ultimately sold to satisfy the indebtedness, margin indebtedness, due the firm, or were delivered upon payment of those balances.

Q. Was the amount of money collected on these marginal accounts in reality a part of the estate?

Mr. LINFORTH. One minute.

The WITNESS. Not in my opinion.

Mr. LINFORTH. One minute. We object to that, Mr. President, upon the ground that it calls for his opinion and conclusion.

The PRESIDING OFFICER. The objection is sustained. State the facts.

Mr. BARKLEY. Mr. President, I desire to propound the interrogatory which I send to the desk.

The PRESIDING OFFICER. The question will be read.

The legislative clerk read the question, as follows:

Do you know how the fees allowed to the attorneys for the receiver compared with the fees allowed in other similar cases?

The WITNESS. I could not make a comparison, because I know of no other case of the same general nature—in other words, a stock-brokerage failure presenting the same problem—except one which occurred subsequently, and in which no fees have thus far been allowed, so I am informed.

The PRESIDING OFFICER. Do counsel for the respondent desire to ask any further questions?

Mr. LINFORTH. Just one further question, Mr. President.

By Mr. LINFORTH:

Q. From your knowledge as attorney for this company, is it not a fact that upon the books they had assets of $1,521,096.54 book value?—A. The assets as listed on March 11, book value, were $1,722,960.

Q. And is it not a fact that they had in customers' accounts securities, some pledged and some unpledged, to a total of $1,538,879.81?—A. I did not get the first part of that figure. One million and how much?

Q. $1,538,879.81.—A. I think that is approximately correct; yes.

Q. So that the value of the assets held by them belonging to others, plus the book value of their own assets, was three million fifty-nine thousand and odd dollars, was it not, approximately?—A. Is that the total of the two?

Q. Yes, sir.—A. It is a matter of addition. I should say that is correct.

Mr. LINFORTH. That is all.

The PRESIDING OFFICER. Are there any further questions?

By Mr. Manager BROWNING:

Q. Did those two amounts overlap, and were they included, part of them, in the same thing?—A. My understanding was that the assets of $1,722,000 included the marginal customers' accounts receivable, but counsel implies that that was not the case.

Q. And the difference between the two was the actual estate?—A. That was my understanding of it up until this time.

Mr. BLACK. Mr. President, I desire to submit an interrogatory.

The PRESIDING OFFICER. The question will be read.

The legislative clerk read as follows:

What is the largest fee you have known to be allowed in a receivership or bankruptcy case in that vicinity, outside of the fee in the Colvin case?

The PRESIDING OFFICER. The witness will answer, if he knows.

The WITNESS. I have searched my recollection, and I could not give you an accurate reply on that. I have had the figures in mind, and I know they were considerably less than the allowance in this case, but I could not give you the exact figures or mention the exact sum.

Mr. CONNALLY. Mr. President, I want to make an inquiry about procedure. Is there anything that requires the witness to stand? Why could not the witness have a seat, and be comfortable?

The PRESIDING OFFICER. Answering the interrogatory of the Senator, a rule has been adopted that the witness shall stand.

The witness will retire.

(The witness retired from the stand.)

Mr. ASHURST. Mr. President, if I may be heard a moment, the expenses of witnesses are very great to the Government, and I am assuming that counsel for the respondent and the managers themselves are finally through with the witness who has just left the stand and that he will proceed to his home and thus save the expense of his subsistence.

The PRESIDING OFFICER. The Senator inquires of the managers upon the part of the House and also counsel for the respondent, as to whether or not the further attendance of this witness is desired.

Mr. Manager BROWNING. Mr. President, we should like one intermission to give us time to determine whether we will need him for rebuttal testimony, and then we will advise the court.

Mr. ASHURST. The expense for the subsistence of witnesses is very considerable. Of course, no expense will be spared in affording the respondent a fair trial, but I hope that the honorable managers and the honorable counsel for the respondent, when they finish with a witness, will let the court know that they are finally through with the witness, so that he may proceed to his home.

The PRESIDING OFFICER. The request of the managers, the Chair thinks, is quite reasonable. The managers on the part of the House will call their next witness.

EXAMINATION OF PAUL S. MARRIN

Mr. Manager BROWNING. Call Mr. Paul Marrin.

Paul Marrin, having been duly sworn, was examined and testified as follows:

By Mr. Manager BROWNING:

Q. Is this Mr. Paul Marrin?—A. That is correct.

Q. Are you a practicing attorney in San Francisco?—A. I am.

Q. For how long?—A. For about 13 years.

Q. Of what firm are you a member?—A. Thelen & Marrin.

Q. Mr. Marrin, what was your first information with regard to the Russell-Colvin receivership?—A. On Friday, the 7th of March, Mr. Francis C. Brown advised me that the Russell-Colvin Co. were in difficulties, that they had been advised——

Mr. LONG. Mr. President, there is so much disorder in the galleries that we cannot hear the witness.

The PRESIDING OFFICER. The ladies and gentlemen in the galleries must preserve order. They are here by the courtesy of the court, and unless they shall preserve order the Sergeant at Arms will be instructed to remove those who are creating the disorder.

The WITNESS. Mr. Brown advised me that Russell-Colvin Co. had received a letter from the stock exchange advising them that unless they raised the sum of $200,000, and placed it at the disposal of their business by the following Monday, which was the 10th of March, the exchange would suspend the firm. He stated that negotiations were proceeding by certain of the partners to raise this money, but that there was not a great deal of hope of success; that in case they were unable to raise the money and the firm was suspended on the following Monday, he anticipated that there would be a run on the firm by its customers and creditors which would perhaps result in suits being filed and attachments levied, and because of the badly frozen condition of the firm would inevitably result in bankruptcy, and that he believed in case it was impossible to raise the money and avoid the suspension an equity receivership was the best solution of the difficulty, and would result in an orderly liquidation.

He stated that, in his opinion, the firm was solvent, but that because of the market conditions, its assets were frozen and could not be liquidated quickly, but that if under a receivership they could be liquidated in an orderly manner, and sufficient time could be given, that the firm could realize a sufficient amount on its assets to pay its creditors in full.

The next day we had further conferences concerning this matter. I was also requested to attend a conference at Mr. Brown's office on the following Sunday. I attended the conference at Mr. Brown's office on the following Sunday, and there were present at that time Mr. Brown, Mr. Addison Strong, Mr. Guy Colvin, Mr. Ronald Berlinger, Mr. Rock, and I believe certain other members of the Russell-Colvin Co. partnership. I was at that time also introduced to Mr. Gardner Olmstead, who subsequently became the plaintiff in this case.

At this conference the question was further discussed as to the possibility of raising the $200,000, and I believe two members of the partnership were absent from the room a considerable portion of the day, and I was told that they were attempting to negotiate the raising of this money. I believe that Mr. Rock was one of the members of the firm.

The situation was explained to Mr. Olmstead, and he requested me, on his behalf, in case the firm was unable to raise the money and prevent the suspension, to file an application for a receiver in Federal court on the succeeding day. That Sunday afternoon I drafted a form of complaint in preparation for filing an application for receiver the succeeding day if they were unable to raise the money. On the following Monday morning, I think, I was advised that the firm had been unable to raise the money, and was requested to proceed with the filing of the complaint. I then completed the form of the papers.

Q. What was done with this petition on Monday?—A. On Monday morning I first—Mr. Brown advised me first that the firm had been unable to raise sufficient funds to avoid suspension, and that the suspension would be announced that morning. That Monday morning, also, I first met Mr. Lloyd Dinkelspiel, who stated that he represented the San Francisco Stock Exchange, which was interested in the matter because Russell-Colvin Co. was a member of the exchange. Mr. Brown, Mr. Dinkelspiel and myself, and Mr. Thelen went to the office of the clerk of the United States district court for the purpose of filing the petition for the appointment of a receiver. We went there sometime during the morning of March 10. Mr. Thelen had previously known nothing about this matter, but he was an older man, and we requested him to go along with us on that Monday morning.

When we arrived at the clerk's office, we told the clerk that we desired to file a petition. He asked us the nature of the proceeding, according to my recollection, and we told him that it was an application for a receivership. I laid the complaint down on the desk, and the clerk drew a card from under his desk, which was a blue card, as I recall it, with the letter "S" on it, and told us that the petition would be assigned to Judge St. Sure. We asked the clerk if we could see Judge St. Sure immediately. I told him that the firm had been suspended that morning, that it was essential, in order to preserve the assets, that a receiver be appointed immediately, and that we would like to see the judge as soon as possible. The clerk told us it would be impossible to see Judge St. Sure because he was in Sacramento holding court. We asked the clerk how long Judge St. Sure would be in Sacramento, and he told us for about a week. We then asked the clerk if one of the other judges, either Judge Louderback or Judge Kerrigan, would take up the petition in the absence of Judge St. Sure, and we were told by the clerk that they would not. This left us in a position, apparently, of not having a judge whom we could consult in the matter for a period of a week, so we hesitated somewhat about the matter, and finally decided not to file the petition at all, under those circumstances, until we could think the matter over further.

We then went back to our offices and, after discussing what would be done under the circumstances, we decided that we would prepare a second petition. The first petition had named as parties defendant only Russell-Colvin & Co., a copartnership. A question had been raised as to the sufficiency of this petition in that it did not name the individual partners as such. We then decided to prepare a second petition naming the individual partners as such. We did that for two reasons: In the first place, because by the system they have of assigning judges in the District Court for the Northern District of California we might very well have gotten Judge St. Sure again at the second time of filing another petition, because, as I understand the system, they place cards in a box or under the desk and they are shuffled, and when a petition is filed they are drawn out by the clerk without knowing who the judge is going to be. We felt that it would be disastrous to this concern and its creditors if we again drew Judge St. Sure as he was still out of town and we would be effectively blocked from taking any action in this matter for a period of a week; but that by filing two petitions we stood a chance of getting one

judge who was in town, either Judge Louderback or Judge Kerrigan, before whom we could present this matter and proceed.

We did not file the two petitions on Monday, because the Russell-Colvin Co. had a matter pending at that time—a sale of certain real estate, as I understand it, upon which it expected to realize a substantial sum of money; and it was represented to us that if this money could be realized in cash and used to repurchase some of the securities which had been pledged, the affairs of the copartnership would be placed in better position before a receiver was appointed, and that the appointment of a receiver would effectively block the real-estate deal and would leave another frozen asset in the hands of the receiver.

That deal was closed on the afternoon of Monday; and on Tuesday morning Mr. Brown, Mr. Dinkelspiel, Mr. Thelen, Mr. Colvin, Mr. Berlinger, and myself and a representative of the Hartford Accident & Indemnity Co., Mr. Jansen by name, went to the office of the clerk of the United States District Court.

I do not believe that anyone other than the attorneys actually went into the clerk's office, the others remaining out in the hallway. We filed both petitions simultaneously. The clerk drew two of the cards from under the table. One of the cards contained the letter "S", the other had on it the letter "L", and one petition was assigned to Judge St. Sure and the other to Judge Louderback. The attorneys then proceeded to the office of the secretary of Judge Louderback with the complaint which had been filed and assigned to his department, and asked his secretary when we could have an appointment to see Judge Louderback. The secretary told us that Judge Louderback was on the bench, but, as I recall it, he expected to adjourn court rather early that day, and that she thought we could see him between 11 and 12 o'clock. We then stayed at the courthouse until about 11:30. In fact, I think we went into Judge Louderback's court room, where he was holding court, and sat in the spectators' chairs until he adjourned court.

When he went into his chambers, we went back into the secretary's office, and after a short delay were told that we could see Judge Louderback. We went into his chambers. There were present at that time, to the best of my recollection, besides myself, Mr. Max Thelen, Francis C. Brown, Mr. Lloyd Dinkelspiel, Mr. Addison G. Strong, Mr. Colvin, and Mr. Berlinger.

I explained to Judge Louderback that I had just filed an application for the appointment of a receiver for the Russell-Colvin Co.; that the firm had been suspended from the stock exchange on the preceding day; that it could not continue its business; that the fact that its suspension had been announced in the newspapers would inevitably lead to demands and had led to demands by numerous creditors and customers; that we had given the matter consideration and believed that the only way in which the affairs of the partnership could be successfully wound up was by the appointment of an equity receiver.

Judge Louderback asked us if we did not think that upon the appointment of a receiver a petition in bankruptcy would be filed. We told him that perhaps such a petition would be filed, but that we felt that we could successfully defend against such a petition because, in our opinion, at that time the firm was not insolvent, but was simply in such a frozen condition that it could not liquidate the assets on hand sufficiently rapidly to meet the demands of its various creditors.

I then told Judge Louderback that the parties would like to suggest as the appointment of a receiver, if he decided to appoint a receiver, Mr. Addison G. Strong, who was present in the room. I explained to the judge that Mr. Strong was a certified public accountant, a member of the firm of Hood & Strong, that he had been auditor for the stock exchange for some time; that Mr. Strong had been auditing the affairs of this particular partnership; that he was thoroughly familiar with all the accounts and all the business; that he was a man of high reputation and ability, and we believed that because of his familiarity with the matter he was the best qualified man whom the parties knew to act as receiver in this matter.

Mr. Brown, then, after I had spoken, talked to Judge Louderback further about Mr. Strong's qualifications and explained them more fully. I think he also explained, perhaps more fully, the situation with regard to the affairs of the partnership. The judge then asked Mr. Strong if he were represented by any of the attorneys in the room. Mr. Strong told him that he was not. The judge then said to Mr. Strong, "If you are appointed receiver by me, you realize that you will be an officer of the court, representing the court and not any of the parties, and if you are appointed as receiver will you consult me with reference to the employment of your counsel?" Mr. Strong said that he would.

The judge then said that he would fix a bond for the receiver in the amount of $50,000 and that he would also fix a bond to be put up by the plaintiff in the amount of $50,000. We were somewhat surprised at the requirement for a plaintiff's bond, and we asked Judge Louderback the reason for this requirement. The judge said that he required the filing and the posting of plaintiff's bond in order to protect the other creditors of the estate against injury on account of the appointment of a receiver if the appointment were subsequently found to have been wrongfully made.

I believe that was the substance of everything that occurred, according to my recollection now. I do not recall anything else particularly that occurred.

We then left Judge Louderback's chambers and went out in the hallway. There we consulted with Mr. Jansen, the representative of the Hartford Accident & Indemnity Co., concerning the bond. Mr. Jansen said they would write the receiver's bond; there was no question about that, but they would not write the plaintiff's bond for the protection of other creditors in the amount of $50,000 without having collateral security in that amount deposited with the surety company. This condition it was impossible to meet. So, Mr. Thelen, Mr. Dinkelspiel, Mr. Brown, and myself returned to the judge's chamber—I believe that was within about 10 minutes after we had left—and we explained to the judge the impossibility of securing plaintiff's bond in this amount. The judge thereupon concluded to reduce the bond to $10,000.

Q. What was the amount of the plaintiff's claim?—A. The amount of the plaintiff's claim, according to my recollection, was about $3,900. We then left the judge's chambers.

I did overlook one fact in connection with our first conference with Judge Louderback. I believe that the judge had before him the other petition which had been filed; at least he knew of the filing of the other petition, and he asked us about it. I do not recall exactly the conversation that was had, but, anyway, it was to this effect: That he would not act upon this petition unless we would consent to dismiss the other petition; and we agreed to dismiss the other petition. We left the conference with the judge—the first conference—with the understanding that when we had secured the bonds and had them ready for filing and approval, we may return, and the judge would then appoint Mr. Strong as receiver.

After we left the second conference, at which the judge reduced the amount of the plaintiff's bond, we returned to our offices and got in touch with the surety company and made arrangements for the writing of the bonds. The receiver's bond presented no difficulty whatever, because that is the usual form of bond. We could not, however, find any record of there ever having been any requirement in any other case of a plaintiff's bond, and we consulted the records of the clerk's office, and the clerk was unable to give us any information with reference to it. The surety company had no record of ever having written any such bond, and we could find no form which had been followed in any other proceeding as to that form of bond. However, we took the form of order and during the course of the afternoon, working, I think, principally in the clerk's office, because it was

there we were attempting to get information as to the form of the bond, we prepared a bond for presentation to the judge in a form that we believed would be satisfactory to him. My recollection is that we had incidentally during the course of the afternoon dismissed the complaint which had been filed and which had been assigned to Judge St. Sure. During the course of the afternoon we completed forms of bonds or at least completed a form for submission to the judge, and it is my recollection that about 4 o'clock in the afternoon of Tuesday, March 11, we returned to the judge's chambers, or returned, rather, to the office of his secretary, and requested a further interview with him concerning the appointment of the receiver.

It is my recollection that we were told that the judge was sitting with the circuit court of appeals that afternoon and that we would have to wait, but that he would see us when he came off the bench of the circuit court of appeals. We did wait and saw the judge later that afternoon, my recollection being that this conference was held at about 5 o'clock in the afternoon on the 11th of March. There were present at that conference Mr. Strong, Mr. Dinkelspiel, Mr. Thelen, Mr. Brown, and myself, and I believe that the representative of the surety company was present at that time, because we were there in the matter of getting the bond approved. We presented to the judge the form of order for the appointment of the receiver. He made a slight change in the form of the order, my recollection being that he wrote in a phrase requiring that the bond be filed before the receiver should take possession of the property. We then presented the form of bonds, and my recollection is that on the plaintiff's bond, because of the uncertainty as to the form, we had not at that time written in the penalty clause. We had the frame of the bond prepared and had a penalty clause prepared, but I do not believe we had written it in at that time, but desired to submit it to the judge for his approval before we placed it in the bond. The judge approved the form of the penalty clause and approved the bond, and the clause was then written into the bond, according to my best recollection, and the judge approved the bond at that time. He also signed the order appointing Mr. Strong as receiver.

We then left the judge's chambers, and just as we were leaving the judge's chambers he said to Mr. Strong, "When this business of qualifying is over, I should like to see you."

We then went out into the clerk's office and filed the bond and the order appointing the receiver, and also Mr. Strong took the oath as receiver and qualified. We were quite some little time in the clerk's office, because we wanted to make out complete copies of all the instruments we were filing, with all the interlineations and signatures and dates. I also desired to procure certain certified copies of the order appointing the receiver so that he would have evidence of his authority to take possession of the assets of the firm.

We then left the clerk's office, my recollection being that this was about a quarter to 6 or 6 o'clock; and I returned to my office. We rode on the street car down Market Street from the Post Office Building, in which the Federal courts are located, and I recall only riding down with Mr. Strong and Mr. Thelen. There may have been others present. I returned to my office. I saw some of the parties on the following day, which was Wednesday. I did not see the judge again on this matter until Thursday following. During the morning of Thursday I was out of my office part of the day, and when I got back before noon my secretary advised me that Judge Louderback's secretary had phoned and had requested Mr. Thelen and Mr. Brown—Mr. Thelen or me, I believe—and Mr. Brown to have a conference with Judge Louderback at noon. At noon Mr. Thelen, Mr. Brown, and I together went to the chambers of Judge Louderback and we were shown into his chambers. When we came in Judge Louderback told us that he had decided to remove Mr. Strong as receiver. He stated that Mr. Strong had failed to keep an appointment with him, that he was insubordinate, that he had shown disrespect for the court, and that he intended to discharge him as receiver. He stated that he had requested Mr. Strong to return to see him, I believe, about the appointment of counsel; and that instead of doing so Mr. White, of the firm of Heller, Ehrman, White & McAuliffe, had called to see the judge.

Q. What time was this that Mr. White had called in relation to the time Mr. Strong came back after his appointment?—A. Mr. White had called before Mr. Strong had returned to see the judge. The judge stated that he regarded this as an effort to force him to approve Heller, Ehrman, White & McAuliffe as attorneys for the receiver, and that he resented it and did not like the attitude of Mr. Strong.

I then stated that I felt that if Mr. Strong had failed to keep an appointment that it was undoubtedly due to a misunderstanding; that I did not believe Mr. Strong would deliberately defy the court, and that I felt that if the parties should get together and talk the matter over that it could all be adjusted.

Incidentally, Mr. Brown also spoke up, and we argued with the judge for quite some little time, attempting to get him to reverse his decision and retain Mr. Strong, again pointing out Mr. Strong's qualifications and the necessity for a competent man in charge of this firm, which was a stock brokerage firm, and the affairs of which were very involved. The judge, however, stated that he had made up his mind and that he did not intend to change it; that he had asked Mr. Strong to call and see him at a quarter to 1, and that he was going to request his resignation; that if Mr. Strong did not resign, he was going to discharge him as receiver. My recollection is the judge told us at that time that he had already prepared an order of discharge.

He then stated that a number of—that he had been approached by a number of different persons requesting that he appoint various parties as receiver in this case, and he turned to me and said "You know these receiverships are the plums and sugar in this business." Then he said that two parties had approached him in the hall requesting that he appoint a man by the name of Sherman who, according to his statement, had some connection or former connection with a masonic lodge in San Francisco; but he said "Of course I cannot appoint Mr. Sherman because his attorneys are Joseph McInerney and Samuel Shortridge, Jr." But he said in thinking the matter over there had just occurred to him the name of a man who was on his jury panel in his court, a Mr. H. B. Hunter; that he had ascertained that Mr. Hunter was connected with the stock brokerage firm of William Cavalier & Co.; that he believed for that reason that he would be qualified to handle this particular receivership and was a man who would be familiar with the problems of this business. He stated that Mr. Hunter was formerly a receiver of the Security Bond & Finance Co., of Berkeley, and had been recommended to him by Mr. Sidney Schwartz, a former president of the San Francisco Stock Exchange. He said he was going to hold the matter of the appointment of Mr. Hunter open until 4 o'clock that afternoon in order to give us an opportunity to look up Mr. Hunter and see if we found out anything against Mr. Hunter which we would desire to report to the judge.

He stated that he had purposely selected Mr. Hunter because he did not know him; that he desired, because of the trouble which had arisen in this case, to make an appointment which would not subject him to any criticism, and that he desired to appoint a man with whom he was not personally acquainted and whom he did not know, but who had ability and integrity which could not be questioned. He stated that if he appointed Mr. Hunter that he would not have anything to say about the selection of counsel by Mr. Hunter, but would let Mr. Hunter employ his own attorney of his own selection.

We then left the judge's chambers and I returned to my office. I made some inquiry concerning Mr. Hunter's ability and integrity. I had no personal knowledge of Mr. Hunter prior to that time. From my inquiry I was advised that he was a man of fair ability and, so far as I could ascertain, a man of integrity. I then gave this information to Mr. Thelen, and I understand—but I cannot testify of my own knowledge to this—that Mr. Thelen made independent in-

quiry. I asked Mr. Thelen to phone Judge Louderback the results of what we had ascertained, and I understand that he did so; but I cannot say this of my own knowledge, because I was not present when he phoned.

I was present with Mr. Francis C. Brown when he telephoned to Judge Louderback about 3 o'clock that afternoon and stated that he had recommended Mr. Strong as receiver for the position and that he could not consent to the appointment of anyone else.

This is my best recollection of what occurred during those 2 days. I did not see the judge again, I think, for perhaps several months. I believe it was on the day following Mr. Hunter's appointment that I was called on the telephone by Mr. Hunter's secretary and asked to be present at a conference between Mr. Brown and Mr. Hunter and others at Mr. Hunter's office in the Russell-Colvin & Co. former offices.

I attended this conference, at which conference I met Mr. John Douglas Short. I also met Mr. Erskine, of the firm of Keyes & Erskine, who stated they were attorneys for the receiver, and Mr. Hunter. We had a short conference about the conduct of the receivership. Mr. Hunter told us, according to my best recollection, that he had been requested by the judge to confer and have his attorneys confer with attorneys for the plaintiff and the defendant in matters concerning the receivership; that he would undoubtedly call upon us frequently. That is about all I recall occurring at that time.

Q. Mr. Marrin, at the first conference which you had with Judge Louderback in this case on the morning of the 11th of March 1930, did you at that time on that day fail to make the bond as required by him that day?—A. No. The bond was made, filed, and approved on that day.

Q. Was there any petition presented by you on Monday of that week?—A. No; that is, the petition was taken out to the clerk's office, but no petition was filed on that day.

Q. On the afternoon of the 11th of March, when you left there after Mr. Strong qualified, state whether or not the respondent at that time told Mr. Strong to return that day.—A. No; he did not. My recollection of what he told Mr. Strong is that " when this business of qualifying is over, I should like to see you ", without specifying any date or any particular time.

Q. Was there any understanding between those who were interested there that he was to come back that day?—A. No.

Q. On the occasion when you were sent for by respondent and told that he was going to discharge Mr. Strong, was there any complaint made by him at that time about the connection of the stock exchange with the attorneys he had selected?

Mr. HANLEY. Objected to. What happened is the best evidence, and not what complaint was made.

The PRESIDING OFFICER. The witness will state what was said.

The WITNESS. To the best of my recollection, the stock exchange was not mentioned. The judge complained about the fact that Mr. Strong had not kept the appointment; that instead of keeping the appointment with him he had sent a member of the firm of Heller, Ehrmann, White & McAuliffe to see him.

Incidentally I omitted something in my recitation of what occurred at that conference. The judge did state to us that he had suggested as possible attorneys for Mr. Strong the firm of Pillsbury, Madison & Sutra, and Sullivan, Sullivan & Roche, but that Mr. Strong would not have anything to do with those firms, but insisted upon the appointment of Heller, Ehrmann, White & McAuliffe. The judge did not mention the name of Mr. Short nor of Keyes & Erskine.

Q. Did he ever suggest Short to you as having been recommended by him to the receiver, Mr. Strong, as attorney for the receiver?—A. No. The judge never suggested Mr. Short's name to me at any time.

Q. Was there any effort on the part of the stock exchange to control the receivership?—A. Not to my knowledge. I may say that I did not at that time personally know the attorneys for the stock exchange. The first time I ever met a member of that firm personally was when I met Mr. Dinkelspiel on the Monday morning when we first took the complaint to the office of the clerk for filing on the day when it was not filed.

The PRESIDING OFFICER. The Chair takes the liberty of suggesting to the witness that we might proceed a little more rapidly if the witness would answer the questions propounded.

By Mr. Manager BROWNING:

Q. Before the qualification of Mr. Strong, had you heard any discussion of who his attorney was going to be?

Mr. HANLEY. We object on the ground that that would not bind the respondent and calls for hearsay.

The PRESIDING OFFICER. It is a part of the res gestae. While it may not be so important, it is for the court to decide. Answer the question.

The WITNESS. No; there was no discussion whatever as to who his attorney should be.

By Mr. Manager BROWNING:

Q. The first time you heard it mentioned was at what time?—A. My best recollection is on Wednesday following the appointment of Mr. Strong as receiver.

Q. Who suggested or who requested that the clerk's office be held open that afternoon for the qualification of Mr. Strong as receiver, if you know?—A. The attorneys—myself, Mr. Dinkelspiel, and Mr. Brown—requested Mr. Maling to hold his office open until we could get the bond approved and the receiver appointed, so that we could qualify the receiver that night.

Q. Did you, or any of the attorneys connected with it in your presence, request the judge to hold the clerk's office open?—A. No.

Mr. Manager BROWNING. Take the witness.

The PRESIDING OFFICER. Proceed, gentlemen.

Cross-examination by Mr. HANLEY:

Q. Mr. Martin, you were not a witness at the hearing had in San Francisco in September last?—A. No.

Q. And you have given us your memory of the affair as you remember it from its inception?—A. To the best of my recollection.

Q. Who refreshed your memory upon that?—A. I refreshed my own memory. I had a rather vivid recollection of those events, and also after I was subpenaed in this case I went back over my files and looked at the various papers and proceedings that occurred, letters and memorandums written, and refreshed my own recollection. No one refreshed my recollection.

Q. Did you read the testimony that was taken at the preliminary hearing of this matter in San Francisco between the dates of the 6th and the 12th of September of 1932?—A. I have read part of the testimony.

Q. What part?—A. I believe that I have read substantially all of the testimony which had to do with the Russell-Colvin case.

Q. By that do you mean that you read your partner's testimony, Mr. Max Thelen, that he gave at that hearing?—A. Yes; I did.

Q. Did you help Mr. Max Thelen prepare his memoranda of the events that took place?—A. I did not.

Q. Did you read the memoranda of Max Thelen that he made as to what transpired immediately following the removal of Strong?—A. I read those memoranda which are set forth in the transcript of the proceedings in San Francisco.

Q. And in San Francisco between the 6th and the 12th days of September 1932 did you consult with Mr. Browning or Judge Sumners or Mr. LaGuardia?—A. At that time?

Q. Yes.—A. I did not. I was not present in San Francisco.

Q. Were you in San Francisco at any time, and did you give any statement in relation to the matters at that time?—A. The first time I ever met Mr. LaGuardia, Mr. Browning——

The PRESIDING OFFICER. Will you answer the question " yes " or " no "?

The WITNESS. May I have the question read?

The PRESIDING OFFICER. The reporter will read the question.

The Official Reporter read the question, as follows:

Q. Were you in San Francisco at any time, and did you give any statement in relation to the matters at that time?

The WITNESS. Yes; I was in San Francisco.

Q. Did you give a statement to any of the three managers, or, rather, the three special committeemen coming from the House to San Francisco in September of 1932?—A. No.

Q. Did you talk with any one of the three?—A. In September 1932?

Q. Yes.—A. No.

Q. Were you present in San Francisco at that time?—A. No.

Q. When was the first time that you talked with anyone on behalf of the house?—A. About 3 or 4 weeks ago, when Mr. BROWNING was in San Francisco.

Q. And that is the first time that you met him?—A. The first time I ever met him.

Q. And was that the time that you refreshed your memory, or when?—A. At that time I was requested to meet Mr. BROWNING at a conference of witnesses. The day preceding that I went over my files in this case. When Mr. BROWNING told me he wanted me to come to Washington, and I was subpenaed, I further went over the files carefully to be sure of my recollection.

Q. When you said that that was 4 weeks ago, you mean it was about the 29th of April, less than 3 weeks ago; do you not?—A. I would not fix the date with certainty. It was when Mr. BROWNING was in San Francisco.

Q. Can you tell me what date of April or May it was that you talked with BROWNING in San Francisco? When I say "BROWNING", I mean Congressman BROWNING. I say that for shortness.—A. I could not fix the date accurately. I think it was probably 3 weeks ago Monday. That is my best recollection.

Q. But you do recollect distinctly everything that took place in 1930, in March; do you not?—A. I keep a diary, Mr. Hanley.

Q. Have you your original notes of your diary of March of 1930?—A. No; I have not.

Q. Did you bring it with you?—A. I have it at the hotel.

Q. Did you discuss that with Mr. BROWNING when you met him in San Francisco?—A. No; I do not think I did.

Q. Did you have it with you when you discussed it in San Francisco?—A. I had it with me; yes.

Q. I mean at the interview that you had.—A. Yes; I had it with me.

Q. And you refreshed your memory from that; did you?—A. I had refreshed it the day or so preceding that.

Q. Did you refresh it on your way over on the train since you left San Francisco?—A. No; I do not believe I looked at it.

Q. Did you discuss it with Mr. Brown?—A. Mr. Brown was not on the train.

Q. Did you discuss it in San Francisco or any other place with Mr. Brown?—A. I have discussed it briefly with Mr. Brown in Washington.

Q. When?—A. Yesterday.

Q. Who was present at that conversation?—A. Mr. De Lancey Smith and Mr. Brown's wife.

Q. And you went over your testimony that you were to give here today; did you?—A. I told Mr. Brown my recollection of what happened.

Q. You had been associated with Mr. Brown and also with De Lancey Smith as one of the attorneys upon some matters of the Russell-Colvin firm heretofore, had you not?—A. I had approved a form of trust indenture on which debentures were issued in connection with the Consolidated Paper Box Co.

Q. Anything else?—A. Nothing else to my recollection.

Q. How about the Coen Products Co.?—A. I know nothing whatever about that.

Q. Would you say that the firm of Thelen & Marrin were not employed by De Lancey Smith upon the writing or underwriting of the Coen Co., Inc.?—A. Not to my knowledge.

Q. Would you say that you did not render any bill or services to that concern or to De Lancey Smith with reference to that proposition, the Coen Co.?—A. No; I did not.

Q. What is your best memory as to whether you did or you did not do any work with the Coen Co.?—A. My best memory is that I did not do anything whatever.

Q. Do you ever recall the name of the Coen Co., Inc., in any business of any kind or character that your firm did for De Lancey Smith or Russell Colvin?—A. I knew there was such a concern, but I do not recall having done any work for them at all—any legal work.

Q. As a matter of fact, Gardner Olmstead in this case was introduced to you by the defendants in the case; was he not?—A. That is correct.

Q. You never met Gardner Olmstead until one of the partners who were going into receivership wanted to use you as the attorney for the plaintiff. Is not that true?—A. No; that is not true.

Q. When you met Gardner Olmstead, what member of the firm was it—Ronald Berlinger, or was it Guy Colvin—that introduced you to him?—A. My recollection is that Guy Colvin introduced Mr. Olmstead to me.

Q. Was Brown present?—A. I do not think he was in the same room.

Q. Was he there at the time?—A. He was in the same offices, the same suite of offices; yes.

Q. Had you a close relationship with this firm of De Lancey Smith and Francis C. Brown that you called each other in upon various matters that they were interested in and that you were interested in?—A. No. Our firm has absolutely no connection with their firm.

Q. You were called in by what party in the early days of March 1930?—A. Mr. Brown first talked to me.

Q. And he made the contact for the conference; did he?—A. Yes; he did.

Q. And you met then—had you known Ronald Berlinger or Guy Colvin at that time?—A. I had met Mr. Berlinger. I do not believe that I knew Mr. Colvin before that time.

Q. Did you know at that time, or did anyone inform you at the conference had, that Russell-Colvin had borrowed from brokers and banks $330,000 more than the customers had borrowed from them?—A. I do not recall that anyone made that statement to me.

Q. Did anyone give you a set-up of the condition of the company that showed that Russell-Colvin & Co. had borrowed some three hundred or odd thousand dollars from the banks and the brokers more than the customers had borrowed, or any such amount?—A. I do not recall that detail, Mr. Hanley.

Q. When you filed this petition for the appointment of a receiver, did you prepare it?—A. I prepared it; yes.

Q. Did you send it over to Brown's office to have him O.K. it—the attorney for the defendant?—A. No. I prepared that petition myself, and——

The PRESIDING OFFICER. Can you not answer that "yes" or "no"?

The WITNESS. No.

Q. Did Brown prepare any part or amend any part of your draft of the proposed complaint?—A. He suggested one amendment. According to my recollection, he suggested one amendment.

Q. Did he prepare the amendment and attach it to the complaint?—A. No. According to my best recollection, the amendment consisted simply of an interlineation so that the complaint would be brought in behalf of all of the creditors instead of simply this plaintiff.

Q. Russell Colvin was introduced to you by Guy Colvin upon the statement that he was a resident of the State of Nevada, was he not?—A. You mean Mr. Olmstead?

Q. Yes; Mr. Gardner Olmstead. Is that right?—A. Yes; I was told that he was a resident of Reno.

Q. And the reason for that was diversity of citizenship, to give the Federal court jurisdiction, was it not?—A. Yes.

Q. The only reason they picked out Gardner Olmstead was the fact that the partner introduced him to you as a man

resident of our friend's town here at Reno, Nev., is it not?—A. I do not know what their reasons were. I know that the plaintiff must be a resident of another State in order to confer jurisdiction on the Federal court.

Q. Well, the partner in the matter, Guy Colvin, told you, "Here is Mr. Gardner Olmstead, who wants to sue us for receivership", did he not?—A. I do not recall that he made any such statement.

Q. There was no question about why he was introduced, to your mind, was there?—A. No.

Q. You knew that Guy Colvin introduced Mr. Gardner Olmstead for one purpose, and one purpose only, namely, to sue that company, did you not?—A. Yes.

Q. And the very object of meeting these people in Brown's office or your office with these partners was to have this receivership appointed, was it not?—A. Yes.

Q. There was no question about that, was there?—A. No.

Q. Who gave you the facts, outside of Gardner Olmstead, which caused you to prepare the two complaints in equity?—A. I believe Mr. Brown; I would not be certain.

Q. The last witness, Francis C. Brown?—A. I think so; yes, sir.

Q. You said the first meeting took place on Saturday, the 8th; or was it Friday, the 7th?—A. Friday, the 7th.

Q. You had conferences, then, on Saturday?—A. Yes.

Q. And then you determined to draw the complaint, and you drew in a draft form upon Sunday what would be the complaint in the matter?—A. I did not determine to draw the complaint until Sunday afternoon.

Q. Then you dictated the complaint Sunday afternoon, did you?—A. Yes.

Q. And you had it typed that same afternoon in regular form; or did you wait until Monday?—A. I had a draft of it prepared on Sunday.

Q. Did you turn that over to Brown on Sunday, or on Monday?—A. My recollection is that I did not turn it over to Brown.

Q. Did you send it over to Brown?—A. No.

Q. How did it get in his office and return to you, if you know?—A. Mr. Brown came to my office and looked at it.

Q. And it was while at your office that he prepared the amendment to it, was it?—A. He did not prepare it; he suggested it.

Q. You are sure, now—and I do not want to trap you—that Brown did not at any time take to his office and amend the draft as you prepared it?—A. My best recollection is that he did not.

Q. When did you prepare the second complaint?—A. During the noon hour on Monday the 10th of March.

Q. You went out upon the 10th of March; are you sure that both verifications to the two complaints were not sworn to simultaneously, the one that went to Judge Louderback and the one that went to Judge St. Sure?—A. I am practically sure of that.

Q. That they were?—A. That they were not.

Q. Again I do not want to trap you. I am asking you if you have any recollection—and if you have not, say so—that the two verifications, the one to the Louderback and the one to the St. Sure complaint, were not sworn to upon the same day before the same notary?—A. They were both sworn to on the same day before the same notary.

Q. Simultaneously?—A. My recollection is that they were not.

Q. What time intervened between?—A. I do not recall distinctly the time. I know the reason why I do not think they were subscribed and sworn to at the same time.

Q. After the complaint was filed, you went to the clerk's office per appointment with this number of people. Is that true?—A. Appointment with whom?

Q. At the clerk's office; you went there on the 10th, I understand; Monday?—A. Yes; but not by appointment with the clerk.

Q. The clerk had nothing to do with it?—A. No.

Q. But you did find out from the clerk, without paying the fee, who the judge would be to whom that case would be assigned, did you not?—A. Yes.

Q. And before you paid the fee you withdrew the complaint, and did not file it. Is not that true?—A. That is correct.

Q. And after you had ascertained the name of the judge without paying the fee, you withdrew the filing, did you not?—A. Yes; it had never been filed.

Q. Ah, but you placed it upon his desk, and you showed him that you were about to file a complaint, did you not?—A. Yes.

Q. And you told him you were ready to file it, did you not?—A. We told him we had a complaint to file, sure.

Q. And he drew from the box the assignment to St. Sure, and then you withdrew and did not file. Is not that true?—A. That is correct.

Q. Now, with reference to the appointment of the meeting of the parties. You say that Mr. Max Thelen and Lloyd Dinkelspiel and Francis Brown and Ronald Berlinger and Guy Colvin all went to the clerk's office on the 10th. That is true, is it not?—A. Mr. Colvin and Mr. Berlinger did not go into the clerk's office. They may have gone to the building.

Q. You went to the post office or Federal court building with the parties, did you not?—A. Yes.

Q. And that was per appointment either the day before or that very morning, was it not?—A. That morning, yes.

Q. Can you tell us whether it was a man or a woman who gave you the information that no one would act without Judge St. Sure being present?—A. My recollection is that Mr. Maling himself gave us that information.

Q. That morning?—A. Yes; that morning.

Q. Did you have with you at that time the two complaints prepared to file?—A. No.

Q. Will you say that you prepared the second one, which had gone into Judge Louderback's court at the time, from Monday, when you went to the clerk's office, until the actual filing on Tuesday, the 11th?—A. Yes; that was prepared subsequently.

Q. Then, if it was prepared subsequently, what day was it prepared?—A. Monday.

Q. What time on Monday?—A. Between 12 and half-past 1.

Q. Was it verified on Monday?—A. My recollection is that it was.

Q. The next morning you say you had some real-estate transaction to close. Is that true?—A. I was told that there was one Monday afternoon; yes.

Q. And that was the reason for not going and making the double filing at the post-office building, the clerk's office, was it?—A. The reason they were not filed Monday afternoon; yes.

Q. Who told you that? You said Brown, did you?—A. I believe Mr. Brown told me that.

Q. Did he tell you what the transaction was, the nature of it, or the amount of money that was to go to Russell-Colvin?—A. Not in detail; no.

Q. So, with reference to the situation, you were following Brown upon it, were you?—A. No; I would not say that.

Q. Did you dictate an answer, when you were dictating the complaint, to be signed by Brown?—A. I did not.

Q. Will you say that it was not upon your stationery, that the same typewriter that prepared the complaint did not prepare the answer?—A. I do not know anything about the typewriter. I know I did not dictate the answer.

Q. Did you prepare the answer at the time you prepared the complaint in both actions?—A. I never prepared the answer.

Q. Who told you about the system of how the cases were assigned, and when, for the first time?—A. The first time I was aware of it was when we filed this complaint.

Q. You did not know the manner in which the judges had the clerk draw the assignments, did you?—A. I knew nothing about it.

Q. Do you know now the manner?—A. Not except from what I saw in this case.

Q. What is that?—A. Not except from what I saw in this case.

Q. You mean you read the transcript of the clerk, Mr. Fouts, as to the manner in which the assignments were made?—A. I did not read his testimony.

Q. Did you talk to anybody as to how the assignments were made?—A. No.

Q. You said here that Judge St. Sure might get the two in succession. Who gave you that information?—A. We were told that at the clerk's office that day.

Q. So that when you went out, did you know the number, upon Monday that was alleged to be the next number of the filings that were to be had?—A. No.

Q. Did you know that criminal, bankruptcy, and equity have different numbers in that clerk's office?—A. No.

Q. Did you see the number at all as it was drawn from the slip that you were to get if you paid your fees?—A. No.

The PRESIDING OFFICER. Will counsel permit the Chair to ask whether there is any controversy as to the question of the filing of the two complaints, or the preparation of the two complaints, the time when they were prepared, and the time when they were presented, and who were present in the clerk's office?

Mr. HANLEY. They wanted to pick a judge. Is not that evident to the jurors? That is what we are trying to show.

By Mr. HANLEY:

Q. Did the same array who went out upon Monday present themselves to the clerk's office on Tuesday?—A. Do you mean the same parties?

Q. Yes.—A. The same attorneys. I am not clear in my recollection as to whether Mr. Colvin and Mr. Berlinger were present on Monday or not.

Q. Did you not say that upon Monday Mr. Berlinger—we call him different ways, but it is the same thing; I think I have known him longer than you have—Mr. Ronald Berlinger and Mr. Colvin were there upon Monday?—A. I would not be sure about that. My recollection is that they were there on Tuesday when we first saw Judge Louderback; but as to Monday I am not sure.

Q. But Dinkelspiel and your partner, Thelen, were there?—A. Yes.

Q. On both days?—A. On both days.

Q. And Strong was there on both days?—A. I think he was; yes.

Q. Brown also?—A. Brown was there, I know.

Q. Finding the judge engaged upon Tuesday, as you stated in the opening, you went around the corridors, and finally went into his court until he was through, did you?—A. We made an appointment to see him first, and then we had an hour or so to wait, so we went in and sat down in his court room.

Q. When, as to time, between the opening hour of 9 and the hour of noon did you actually make the double filing?—A. I believe that it was between 10 and 11 o'clock.

Q. So that the double filing was made after the usual court hour of commencing at 10 o'clock, the session in the Federal court?—A. I am not certain about the exact hour, but I think it was about 10 o'clock.

Q. Did you not know, Mr. Marrin, that in the whole history of the Federal filing this is the first double filing that was ever made in any action there?—A. No.

Q. Can you name one other before this that established a precedent?—A. I do not know anything about it.

Q. Did you know that there never had been up to this time a double filing for the same defendant with the same plaintiff?—A. No.

Q. You did not know that. Did you think that unusual to make the double filing?—A. I cannot say that I gave it any thought.

Q. You had the point made to you there was some question about whether the partnership ought not to have included all of the members of the partnership, was there not, after you had prepared the first complaint?—A. Yes.

Q. Why, then, was it necessary to file two complaints?—A. The reason it was necessary to file two complaints is that it was absolutely necessary to get one of the judges who was in San Francisco to act upon this matter. We did not care which one.

Q. Do you not know that at that time, and for a long time prior thereto, there was an understanding between Judge St. Sure and Judge Louderback that, in the absence of one, the other would do his work?—A. I do not.

Q. Had you been in the habit of making double filings, or was this the first time that you, as attorney in the matter of filing a suit, had made a double filing?—A. This was the first time I had ever filed similar complaints in the same action.

Q. But you filed a double filing simultaneously, did you not?—A. Yes.

Mr. Manager BROWNING. I think he has been over that about six times, but I do not want to be captious about it.

Mr. HANLEY. I think he has answered it.

Mr. President, is there any objection to my examining from this point? I think it is a better position. If there is any objection, I will keep in the well.

The PRESIDING OFFICER. If the Members of the Senate sitting as a court can hear, there is no objection.

Mr. HANLEY. That is the purpose I have in view, my voice being a little husky today.

By Mr. HANLEY:

Q. Mr. Marrin, is it not true that after you told the judge that you had Strong selected and agreed upon by all that was the first time you said to him there was a double filing?—A. No. My recollection is that the judge asked about the other filing.

Q. The moment the judge arrived in his chambers from the bench you went into his chambers, did you not?—A. Not at that moment; no. I think there was some delay.

Q. "Some delay"; but when you went in there—without detailing what you have already given us—you and Brown had this general talk, as it were, "selling" Strong to the judge as a competent receiver, had you not?—A. Recommending him to the judge; yes.

Q. So that the judge would be impressed with the brilliancy of Strong and his integrity; you were giving his qualifications to the judge, were you not?—A. We gave him qualifications in full.

Q. And you had him agree to appoint him, did you not?—A. No; I do not think we did. The judge indicated that he would appoint him if he secured the necessary bond.

Q. And is it not true, after he had indicated that he would appoint him, then, for the first time, either you or Brown, said, "Well, we had already filed one and it is before Judge St. Sure"?—A. No.

Q. That did not take place?—A. No.

Q. Did not the judge, then and there, send for the papers out in the clerk's office to be brought in to find out about the matter?—A. I do not recall that he did; no.

Q. Did he not tell you that the number of Judge St. Sure was first in time, and that you would have to go to Sacramento or he would get him on long distance phone for you?—A. He did not.

Q. Was anything said at that time to the effect that the judge would get him on long distance phone and agree upon a receiver if you could, then and there?—A. No.

Q. Nothing was said about that?—A. No.

Q. And finally you insisted that it needed immediate attention and you could not go to Sacramento? Is not that true?—A. I do not think we said anything about going to Sacramento; I do not recall that we did.

Q. You learned that Judge St. Sure was sitting in Sacramento in the middle of the day of the 15th, did you not?—A. Yes.

Q. And you knew that by flying it was an hour from San Francisco, and you knew that by train it was 3 hours; why did you not go over on Monday to get Judge St. Sure to sign and fix the receiver?—A. We were not advised that Judge St. Sure would act on the matter in Sacramento.

Q. What is that?—A. In the first place, we were not advised that Judge St. Sure would act in the matter while sitting in Sacramento. In the second place, after the receiver was appointed it was required that we get bonds and have them filed and approved and those orders by him, and we wanted a judge who was in town.

Q. The reason that you did not take this trip by automobile in about 2½ hours or on the train in 3 hours or fly in an hour was that you wanted a judge in San Francisco? Is that your reason?—A. That is the reason.

Q. What is that?—A. That reason, and the reason that we were not told that Judge St. Sure would act on the matter while sitting in Sacramento.

Q. Who told you that Judge St. Sure would not act on the matter while sitting in Sacramento?—A. Nobody told us that.

Q. Did you not know that the northern district of California was all one district and that he could act on an order at any point in the district?—A. I knew that he could; yes.

Q. But you did not go, did you?—A. We did not.

Q. On Tuesday the judge did tell you that when he appointed Strong he was an officer of the court, did he not?—A. He told Mr. Strong that.

Q. Now let us see if your memory has not been somewhat refreshed by the exact memorandum of Thelen that was made immediately at the time when he testified at the other hearing. See if this corresponds with your memory:

Judge Louderback emphasizes the proposition that Mr. Strong will be an officer of the court and that he must confer with the judge in the matter of the appointment of his attorney. The judge asked Mr. Strong whether he had selected any attorney, and particularly whether he had selected any of the attorneys who were there present in the room. Mr. Strong said no, that he had not. Judge Louderback also insisted upon the dismissal of case no. 2594, which had preceded case no. 2595, before the receiver would appoint in the latter case. After leaving Judge Louderback's court room the attorneys conferred, and it seemed that it would be impossible to raise a bond of $50,000 for the plaintiff, so the attorneys return to Judge Louderback's chambers and he thereupon consented to reduce the amount of the plaintiff's bond to $10,000.

Is not that what refreshed your memory today—by reading what your partner wrote immediately at the time and that you had no independent memory at all?—A. No.

Q. It is not?—A. No.

Q. Can you tell us the exact language you used in your testimony in narrating here this morning almost verbatim, as if a speech had been prepared, that Judge Louderback emphasized the proposition that Mr. Strong will be an officer of the court and must confer with the judge in the matter of the appointment of the attorneys?

Mr. Manager BROWNING. Mr. President——

Mr. HANLEY. Just a moment. Let me finish the question.

Q. Will you say that you did not use the exact language that your partner wrote in his memorandum of March 1930?

The PRESIDING OFFICER. The witness may answer the question.

The WITNESS. I should like to hear what I said this morning before answering that.

Q. Time will not permit us to do that. There are about four reporters here shooting in and out, and I will take my memorandum. Will you deny that you did in almost exact language at this very session use the language I have quoted from the memorandum of Mr. Max Thelen?—A. Yes; I will, because my recollection is not identical with Mr. Thelen's.

Q. When did you know for the first time that Lloyd Dinkelspiel, of the firm of Heller, Ehrmann, White & McAuliffe, was a member of that partnership?—A. I knew that, I believe, for the first time on Sunday or Monday preceding the filing of the complaint.

Q. You said that when Judge Louderback went into the matter of the receiver and had him qualify he made the statement in substance and to this effect, "When you qualify I want to see you", did he not?—A. Yes.

Q. And you attempted to interpret it here to the managers that it meant any time, did you not?—A. I did not intend to interpret it at all.

Q. So that the language stands as given that when he qualified he was to see him?—A. My recollection of the language is that he said, "When this business of qualifying is over I should like to see you."

Q. Did you expect that to be 2 weeks from then or did you expect it to be immediately?—A. I had no particular expectation about it.

Q. Well, he said he had no attorney, in the talk he had with the judge as to whether he had selected an attorney, did he not?—A. I do not remember that the judge asked him whether he had selected an attorney.

Q. Did you not know from the equity rules of that court that no attorney in any estate of any kind or character involving a receivership could be ratified and paid unless the judge confirmed the particular selection?—A. Certainly I knew that.

Q. Did you not know, when the judge talked to him, that he had that rule in mind?—A. I do not know what the judge had in mind; I assumed that is the rule he had in mind.

Q. For the purpose of the record, because some Senators have been there and others have not, the post office is at Seventh and Mission, is it not?—A. Yes.

Q. It is one block from Market to Seventh, the next street, is it not?—A. Yes.

Q. And down to Montgomery about seven?—A. Approximately.

Q. In other words, a car ride of about 6 or 7 minutes?—A. That is right.

Q. In the open street car do you recall that Lloyd Dinkelspiel was with you?—A. I do not recall anyone except Mr. Strong and Mr. Thelen and myself.

Q. Can you remember a conversation that was had on that street car before he got off at Montgomery?—A. Between whom?

Q. Between Mr. Strong and Mr. Brown.—A. No.

Q. Where were they seated relatively—on the outside of one of our electric Market Street cars or were they inside? I mean by that a car not having glass on the outside in front and back?—A. My recollection is that I stood on the inside of the car.

Q. And Thelen and Strong and Brown were seated or standing with you?—A. Mr. Thelen and Mr. Strong and I were together, to the best of my recollection. I do not remember whether Mr. Brown was even on the car.

Q. Will you tell us whether you heard a conversation on that car between Brown and Strong about who was to be attorney or who would be a fine attorney?—A. No; I do not.

Q. Will you say that no conversation took place there with relation to the qualifications of Florenz M. McAuliffe or the disqualifications of Lloyd Ackerman?—A. I did not hear it.

Q. Did you hear either of the names mentioned on the six- or seven-block ride from Seventh and Market down to Montgomery and Market?—A. I do not recall it.

Q. Where did you get off?—A. I got off at Sansom and Market.

Q. You rode one block beyond?—A. One block beyond.

Q. At about what time did you get there?—A. I think it was about 6 o'clock, or a little after.

Q. Did Strong leave before or after you?—A. I believe Mr. Strong got off before I did.

Q. He got off at Montgomery, one block before you. Where were his offices then—in the Hunter Building?—A. I do not know.

Q. Your office was then in the Balfour Building?—A. That is true.

Q. Were you going back to your office?—A. I was.

Q. Did Thelen go with you?—A. Yes.

Q. No one went with Strong?—A. Not that I know of.

Q. And immediately at the corner of Market and Montgomery and Post is the Wells Fargo Building, is it not?—A. Yes.

Q. That is where McAuliffe's office is—almost within 50 or 60 feet of the car line, is it not?—A. Yes.

Q. It was after 6 o'clock—that is true?—A. Yes; it was.

Q. What is the usual time law offices in San Francisco close, from your experience?—A. My experience has been they do not have any regular hours.

Q. What is your usual hour?—A. All the way from 9 in the morning until 10 at night sometimes.

Q. What are your stenographer's hours? Let us see how they conform to the workmen's compensation and women's work hours' measures?—A. The stenographer's hours are from 9 to 5.

Q. What?—A. From 9 to 5.

Q. The clerks get away at 5, do they not?—A. The law clerks?

Q. Yes.—A. Not always.

Q. Well, the lawyers work when there is business?—A. Yes.

Q. As a matter of fact, it is unusual for clients to meet attorneys at 6 o'clock, the dinner hour, is it not?—A. I would not say with reference to anyone else. I occasionally meet clients in the evening, but not as often as I do in the daytime.

Q. What are your usual office hours; let me put it that way?—A. My usual office hours are from 9 to about 6:15.

Q. You did not see Strong the next day at all, which was the 12th, did you?—A. Yes; I saw Strong on the 12th.

Q. When did you see Strong on the 12th? Give us the hour, because he was out with the judge and I do not want any doubt about it.

Mr. Manager BROWNING. Mr. President, I do not think this is necessary. I think these gratuitous insults to the witness are unnecessary, and I object.

The PRESIDING OFFICER. Counsel will not argue with the witness.

By Mr. HANLEY:

Q. What time did you see Mr. Strong on the 12th?—A. I could not fix the hour.

Q. Have you no memory on that? Your memory has been good upon the hours of March or the Ides of March, as we say. What time was it you met him that day?—A. My best recollection is it was around 3 or 4 o'clock in the afternoon.

Q. That was after he had his conference that morning with the judge, was it not?—A. Yes.

Q. We will not go into the conversation. Did you have any business dealing with him about the estate?—A. No.

Q. With whom did you meet him and where?—A. My best recollection is it was in Mr. Brown's office. I cannot be sure about it.

Q. Is it not true that you went to the offices of Heller, Ehrmann, White & McAuliffe?—A. I went there late in the afternoon; yes.

Q. Of the 12th, is it not?—A. Of the 12th; yes.

Q. At the time that Strong told you that firm of attorneys was not going to be selected, was it not?—A. He did not tell me that.

Q. You had a conference with him about that, did you not?—A. I had no particular conference with Strong about his attorneys; no.

Q. That is the first time up to that time in your practice of the law that you had ever been in the offices of the firm of Heller, Ehrmann, White & McAuliffe?—A. I think it was.

Q. And you went there upon the invitation of Lloyd Dinkelspiel, did you not?—A. I forget whether Mr. Dinkelspiel or Mr. Brown asked me to go over there late that afternoon around 4 or 5 o'clock.

Q. You had a conference about the refusal of the judge to confirm the attorney, did you not?—A. I did not have a conference with anybody. I was told then as to what had occurred when Mr. Strong went to see Judge Louderback.

Q. You heard that from Mr. Strong, did you?—A. My recollection is that Mr. Strong told me or stated in my presence what had occurred.

Q. Let us get the parties present on the afternoon at 3:30 of the 12th.—A. I would not say it was exactly 3:30, but on that afternoon there was Mr. Strong—I believe he was present—Mr. Florenz McAuliffe, Mr. White, Mr. Stephens, Mr. Dinkelspiel, and Mr. Brown.

Q. As far as the firm was concerned, you had no personal relations and knew none of them at that time; is not that true?—A. I had met Mr. Dinkelspiel on Monday of that week.

Q. But you did not know Stephens?—A. No.

Q. You did not know Jerome White?—A. No.

Q. And you did not know Florenz McAuliffe?—A. No.

Q. You knew Brown and you knew Dinkelspiel only, did you not?—A. Yes.

Q. They were all put out because Judge Louderback would not appoint their firm as attorneys; is not that true?—A. I would not say they were put out; no.

Q. Did you meet McKenzie there, James by name?—A. I met Mr. McKenzie there one day, but I do not believe it was on that day. I think it was a day or so later.

Q. Strong told you at that time that the judge was going to remove him unless he resigned, did he not?—A. No; I do not think he did.

Q. Was there any proposition at that time to employ an assistant attorney who had been connected with newspapers for the purpose of contesting it, in that interview?—A. No; I do not think so.

Q. Were you present at any such conference, whether it was upon the 12th or 13th after the removal?—A. After the removal I was present at a conference for a short time, and at that conference Mr. McKenzie was present. My recollection is that there was discussion about the employment of John Francis Neylan by Heller, Ehrmann, White & McAuliffe, and Strong. I was there only a short time, and I left.

Q. You knew at that conference where McKenzie was present that the Heller firm were about to employ John Francis Neylan, then and for a long time the personal attorney for the Hearst interests and former editor of the Call, did you not?—A. I do not know whether they were about to employ him. They were talking about it.

Q. You knew they did it?—A. I saw it in the newspapers afterward that Mr. Neylan filed a petition for them.

Q. Do you not know as a matter of fact, and were you not consulted, that that had actually been done?—A. I was not consulted; no. I knew they had done it.

Q. You knew they were then attempting to appeal from the order that he had made removing Strong, did you not?—A. I do not know what steps they followed because I did not follow that matter at all.

Q. Did not Lloyd Dinkelspiel tell you he had prepared the papers to have Neylan make the signature?—A. He did not.

Q. You did not know that, did you?—A. I did not.

Mr. LINFORTH. Mr. President, may I ask that we have a recess for about 5 minutes?

Mr. LONG. I make that motion.

The PRESIDING OFFICER. Counsel for the respondent suggests that the court take an informal recess for a few moments. Without objection, the Senate sitting as a Court of Impeachment will take a recess until 2:30 o'clock p.m.

Thereupon the Senate sitting as a Court of Impeachment took a recess until 2:30 o'clock p.m., at which time it reassembled.

The PRESIDING OFFICER. The Senate sitting as a Court of Impeachment will resume its session. Are counsel for the respondent ready to proceed?

Mr. HANLEY. Yes, Your Honor.

The PRESIDING OFFICER. The Chair is going to take the liberty of suggesting to counsel on both sides that so far as possible they expedite the proceedings.

By Mr. HANLEY:

Q. Mr. Marrin, you recall that you returned at the request of Judge Louderback just prior to the time that the judge had removed Strong as receiver? Do you recall that?—A. Yes.

Q. And you have narrated here your memory of that at this session; have you not?—A. Yes.

Q. Let us see if I can refresh your memory, and see if it corresponds with the testimony of Mr. Thelen that you said you read:

The judge told us that he was dissatisfied with the attitude of Mr. Strong, and that he had failed to keep an engagement to return to see him the afternoon before, and that instead of that, a member of the Heller firm had called upon the judge, and then said that he regarded Mr. Strong's signature to a petition to have the Heller firm appointed as his attorney as an attempt to force the judge's hand, and thereupon the judge said that he had suggested to the receiver the possible appointment of other counsel besides the firm of Pillsbury, Madison & Sutro, or the firm of

Sullivan, Sullivan & Theodore J. Roche, but that the receiver did not regard either of those suggestions favorably.

Mr. Manager BROWNING. Mr. President, may I inquire what record the counsel is reading from?

Mr. HANLEY. I am reading from the verbatim testimony of Mr. Thelen to see if that refreshes his memory.

Mr. Manager BROWNING. Mr. Thelen's testimony is not in the record.

Mr. HANLEY. I am asking him if that refreshes his memory, and if that is not why his memory was refreshed.

The PRESIDING OFFICER. The Chair thinks the question is proper. It seems to the Chair, though, that we are spending rather too much time on matters that may be relevant but do not require so much time in their elucidation. Proceed.

By Mr. HANLEY:

Q. Will you answer that question, Mr. Marrin?—A. You asked me two questions.

Q. Answer them both, if you can.—A. First, as to whether that refreshes my recollection.

Q. Yes.—A. I will say this: That my recollection, while in substance the same as Mr. Thelen's, is not in all respects identical. Secondly, as to whether that is what refreshed my recollection, the answer is "no."

Q. You had an independent recollection of it?—A. I did.

Q. But you made no detailed memoranda from which you refreshed it except notes in a diary?—A. I made a memorandum—yes—that week of what had occurred.

Q. But you made it after the occurrences, did you not?—A. Within 2 or 3 days afterward.

Q. And after you talked with all the parties concerned?—A. I made that memorandum independently.

Q. No; but it was after the talk that you had with Strong and with Brown and with Dinkelspiel and all the others before you put it down in writing. Is not that true?—A. Yes; it was after all of these conferences.

Q. But it was not dictated simultaneously with the occurrence, was it, or written simultaneously with the occurrence?—A. About 3 or 4 days afterward.

Q. But that was after everybody had gotten together and chewed it over, was it not?—A. No; I would not say that.

Q. There was a great deal of talk about it, as to what was said and what was done, and that is your memorandum; is it not?—A. I do not think we ever discussed between ourselves what had happened at these conferences.

Q. You never discussed that at all, would you say?—A. Prior to the writing of this memorandum; no.

Q. You never did?—A. Except insofar as matters were reported to me as having happened at conferences at which I was not present.

Q. Just a few more questions. Did you not know that there was a rule of court that they could exact from plaintiffs bonds in receivership matters, or did you ever hear of such a rule?—A. I had not at that time; no.

Q. Did you ever read the equity rules to find out whether or not the court could so do?—A. You mean prior to filing this complaint?

A. Yes.—A. No; I did not.

Q. Is it not a fact that in State practice the statute provides it?—A. Where a receiver is appointed without notice, the statute provides that a bond must be given to the defendant. This was a different bond.

Q. In State practice it is statutory; is it not?—A. Not where the defendant appears and consents to the appointment of the receiver.

Q. But in this particular matter the defendants had gathered the plaintiff for you, had they not? It was really the defendants' action. Is not that true?—A. No.

Q. Will you say that the judge is not the party who sent out to Mr. Maling or to the officers there to keep the clerk's office open?—A. I do not know what action the judge took, or whether he took any action, in that respect. I do know that we did not make that request of the judge.

Q. In your presence, you mean?—A. I do not know what action the judge took.

Q. I say, you do not know what kept the clerk's office open from its usual 4-o'clock closing time to the extension of the time when the bonds were filed and the order filed and the receiver qualified?—A. No. All I know is that we requested Mr. Maling to keep it open.

Q. And you do not know whether or not Mr. Maling requested the judge whether he would allow him so to keep it open, do you?—A. I do not.

Mr. HANLEY. May I have just a little conference on one point, as to whether I will go into it or not? [After a brief conference.] I think that is all.

The PRESIDING OFFICER. Are there any further questions?

Mr. Manager BROWNING. Yes, Mr. President.

By Mr. Manager BROWNING:

Q. Mr. Marrin, why were you not present in San Francisco last September when the investigating committee was there?—A. I had just got married, and I was away on my honeymoon.

Q. Did you use the memo of Mr. Thelen in any way in preparing or refreshing your memory with regard to the statements that you have made here today?—A. No; I used my own memorandum.

Q. Counsel for respondent asked you if in the conference you had with Mr. Strong on the afternoon of the 12th of March 1930 he did not tell you at that time that the judge had told him that if he did undertake to appoint the firm of Heller, Heller, White & McAuliffe, he would force him to resign; and your answer was that he did not tell you that. I will ask you to state what he did tell you in that conversation.—A. Mr. Strong told me that——

Mr. LINFORTH. Just a moment, Mr. President. We want to object to any conversation with Mr. Strong, not in the presence and hearing of the respondent, as hearsay.

The PRESIDING OFFICER. The objection is sustained, and for the further reason that the matter has been gone into, and the witness has testified with regard to this matter before.

Mr. Manager BROWNING. May I have just a word, if the President will indulge me?

The PRESIDING OFFICER. Yes.

Mr. Manager BROWNING. I understand the rule to be that possibly it would not be competent had not the respondent's counsel opened the question; but he asked the witness if he did not say certain things in this conversation, and the witness never has testified as to that conversation. His answer was that he did not say that. Now, I think under the rule we have a right to ask him what the conversation was which they undertook to show was a certain thing. He says it was not that. Since they opened it, under the rule we insist that we have a right to show what Mr. Strong said to him on that occasion.

The PRESIDING OFFICER. The Chair thinks the counsel is right if this is an entirely different conversation from that as to which the witness was interrogated by counsel, and also cross-examined by respondent's counsel.

Mr. Manager BROWNING. Mr. President, of course we did not have a right to ask the witness in the original examination what Strong said to him. I concede that; but on cross-examination he was asked if Strong did not say certain things. He denies that he said them. Now, my insistence is that under the rule we have a right to ask him what Strong did say to him.

Mr. LINFORTH. Mr. President, we said we did not want the conversation that took place between the parties.

Mr. Manager BROWNING. O Mr. President——

The PRESIDING OFFICER. The Chair adheres to his ruling. Proceed.

By Mr. Manager BROWNING:

Q. Mr. Marrin, is there any State statute that requires, in equity proceedings, in an application for a receiver, a bond to be given to indemnify other creditors by the petitioner?—A. No. You mean, any State statute of California?

Q. Any State statute of California. Do you know of any rule of equity that requires that, either in State or in Federal courts?—A. No.

Q. As I understand, this was not that kind of a bond?—A. This was a bond to the other creditors, yes; not to the defendant.

Mr. Manager BROWNING. That is all.

The PRESIDING OFFICER. Stand aside. Call the next witness.

Mr. LINFORTH. In accordance with the suggestion, Mr. President, we announce that we do not wish to keep this witness any longer. So far as we are concerned, he may be excused.

Mr. Manager BROWNING. Mr. President, we should like one intermission after the session before we determine that, if we may be granted that.

The PRESIDING OFFICER. The request is reasonable.

Addison G. Strong, having been duly sworn, was examined and testified as follows:

By Mr. Manager BROWNING:

Q. This is Addison G. Strong?—A. Yes, sir.

Q. Where do you live, Mr. Strong?—A. My residence is in Berkeley. My office is in San Francisco.

Q. What is your business?—A. Certified public accountant and member of the firm of Hood & Strong.

Q. Who compose that firm?—A. I have three partners—Walter Hood, Edward Lamont, William Doyle, and myself.

Q. In October 1929 was your firm the auditor for the San Francisco Stock Exchange?—A. We were.

Q. As such, were you sent to the Russell-Colvin Co. to audit that firm?—A. No; I was not. I was engaged by Russell-Colvin & Co. They were my clients for several years, and according to the practice of the stock exchange every member has to submit a questionnaire——

Mr. LINFORTH. Mr. President, may I interrupt and suggest that the answer is not responsive, and under the suggestion of the Vice President this morning we should interrupt.

Mr. Manager BROWNING. Mr. President, his answer is entirely responsive.

The PRESIDING OFFICER. The question will be read; and may I say to the witness that we will make greater progress if the witness will answer the questions, and answer as directly as possible. If explanations are necessary in order to explain a categorical reply, leave may be granted if deemed necessary.

The reporter read as follows:

As such [that is, as auditor for the San Francisco Stock Exchange] were you sent to the Russell-Colvin Co. to audit that firm?

The PRESIDING OFFICER. Answer that "yes" or "no."

The WITNESS. No, sir.

By Mr. Manager BROWNING:

Q. Under what capacity were you there, if you went to that firm to audit?—A. I was engaged by them, who were my clients, to prepare a questionnaire for the San Francisco Stock Exchange, to exhibit their financial position, which I did as of October 31, 1929.

Q. After that time what, if any, connection did you have with Russell-Colvin?—A. In the early part of January 1930, on account of the crash in the market, they found themselves to be in somewhat—the working capital was somewhat depleted, and they asked me to come in and prepare a statement about the middle of January in order to show what their financial position was, which I did.

Q. Who asked you to come in and prepare this statement?—A. The partners of the firm.

Q. Did the stock exchange assign you to this Russell-Colvin Co. at any time, for any purpose?—A. The information——

The PRESIDING OFFICER. Answer "yes" or "no", if you can.

The WITNESS. Subsequently, yes.

By Mr. Manager BROWNING:

Q. When was that?—A. That was in the—about the 1st of February.

Q. What assignment did they give you there?—A. The stock exchange had been in very close touch with this company on account of their financial position; and due to the fact that they felt that they could reorganize the company by putting more capital in there, they were watching them closely, and on account of my close connection, they asked me——

The PRESIDING OFFICER. There is too much noise in the galleries. Those who are in the galleries are guests of the court and will preserve order.

The WITNESS. They asked me to watch out and see that they did not become any more extended, and report to them frequently the progress of the reorganization.

By Mr. Manager BROWNING:

Q. Did you do it?—A. I kept in touch with them almost every day.

Q. Do you recall, about the 10th of March 1930, when this concern was suspended by the New York Stock Exchange?—A. I do. The San Francisco Stock Exchange. Pardon me.

Q. Yes; the San Francisco Stock Exchange. What connection did you have with the firm at that time, if any?—A. I was still engaged by them as my clients.

Q. When did you first hear of the application for receivership?—A. That was on Monday, the 10th of March.

Q. Who approached you about it?—A. Mr. Francis Brown acquainted me with the fact that they were about to file a petition for receivership in equity—an equity receivership.

Q. Please state what insistence was made to you at that time for you to take the receivership, if any.—A. Mr. Brown, and also Mr. Guy Colvin, and Mr. Ronald Berlinger, who were partners of the firm, came to me and asked me to accept the position as receiver. I told them I did not wish to do so; that I felt that it would hurt me in my private business more than it would do me good. They kept—they talked to me several times, and the stock exchange also requested me to take the position on account of my knowledge of the company. I told them the same thing, and subsequently they prevailed upon me to accept the position.

Q. And you gave your consent on the 10th of March?—A. On the 10th.

Q. Did you go with the attorneys to the courthouse on the 10th of March?—A. I did.

Q. Did you go back with them on the 11th of March?—A. I did.

Q. The 11th was on Tuesday, I believe?—A. On Tuesday.

Q. Was that the day when the petition was filed in the case?—A. That was the day the petition was filed.

Q. Were you in the conference that was had with Judge Louderback that morning?—A. I was.

Q. About what time was it?—A. I would state about half past 10 or 11 o'clock.

Q. Where did this occur?—A. In the chambers of Judge Louderback.

Q. Before this conference in his chambers, where did you wait for the engagement?—A. Are you speaking of the time on Monday or on Tuesday?

Q. On Tuesday.—A. On Tuesday——

The PRESIDING OFFICER. Where did you wait?

The WITNESS. In the court room of Judge Louderback.

By Manager BROWNING:

Q. State what transpired in this conference.—A. The petition was submitted to Judge Louderback by Mr. Marrin, and Mr. Francis Brown spoke in regard to the company. I did not pay particular attention to that, and my memory is rather hazy, because that was outside of my province. But during the course of that conference Judge Louderback turned to me and asked me if I had any person present in the room in mind as my counsel, and I told him I did not. That was about all that was said, as far as I was concerned.

Q. You left then to undertake to make the bonds that were required by the court?—A. That is right.

Q. When did you see the judge the next time?—A. Later on that afternoon, about 4:30, at which time the bonds had been arranged, we returned to Judge Louderback in his chambers to have the petition signed and the bonds accepted. We were only there for a short time.

Q. What, if anything, did respondent say to you at that conference?—A. As I recall it, the only statement that Judge Louderback made to me was when we had finished and were

leaving the room, I think there were about five of us present, and I was about the third or fourth person going out the door, and Judge Louderback turned to me and said, "When you have made your qualification, come back and see me."

Q. Did he tell you at that time to come back that same day?—A. He did not.

Q. What time of the day was that?—A. That was about 5 minutes or 10 minutes past 5.

Q. Where did you go from there?—A. We went from there to the clerk's office to file the papers.

Q. What time did you get through with the qualification?—A. We got through there about 5:45; about a quarter of 6.

Q. Where did you go after that?—A. When we left the clerk's office, in the hall, someone suggested that we were all through, and that we would go back to our offices, and I mentioned to the gentlemen present that Judge Louderback had asked me to return to see him, and they all agreed that it was too late in the evening, being a quarter of 6, that Judge Louderback had not stressed the fact to return that night, and after some little discussion it was agreed that I should return the first thing in the morning to see Judge Louderback.

Q. Up to that time had you had any discussion with those who were present with regard to who would be your attorney in the case?—A. I had not.

Q. Up to that time, whom, if anybody, had you consulted about an attorney, if you were appointed receiver?—A. I had talked the matter over with my partner, Mr. Hood.

Q. Anyone else?—A. Not up to that time.

Q. Did you contact any attorney?—A. Yes.

Q. Who was it?—A. I phoned to Mr. Ackerman on Monday night.

Q. Is that Mr. Lloyd Ackerman?—A. Mr. Lloyd Ackerman.

Q. What was the purport of your telephone message to him?—A. Mr. Lloyd Ackerman was one of the outstanding attorneys who specialized——

Mr. LINFORTH. Just one moment.

The PRESIDING OFFICER. Answer the question, please.

Mr. LINFORTH. We move to strike that out as not responsive.

The PRESIDING OFFICER. It will be stricken out. The reporter will read the question.

The reporter read as follows:

Q. What was the purport of your telephone message to him?

The WITNESS. To find out whether Mr. Ackerman was in a position whereby he might become my counsel in case I desired him.

By Mr. Manager BROWNING:

Q. Did you agree at that time to appoint him as your counsel?—A. I did not.

Mr. LINFORTH. We object to that as calling for the opinion or conclusion of the witness and not calling for any fact.

Mr. Manager BROWNING. That is certainly a fact.

The PRESIDING OFFICER. In view of the opening statement of counsel for the respondent, as well as some of the testimony that has been presented, the objection is overruled. Proceed.

By Mr. Manager BROWNING:

Q. Did you agree in that conversation to employ Lloyd Ackerman as your counsel if you were appointed receiver?—A. I did not.

Q. Why did you call Lloyd Ackerman?—A. Because Lloyd Ackerman was the attorney for E. A. Pierce & Co., who were the largest correspondent of Russell-Colvin, and I did not know but what on account of his connection in that capacity he might not feel free to serve as my counsel, and that is what I wished to assure myself of.

Q. Is Lloyd Ackerman a specialist in any kind of litigation?—A. He is the secretary of the Pacific Coast Association of the New York Wire Houses, and he has a number of stock-brokerage houses as his clients.

Q. Was he your personal attorney?—A. No.

Q. Why did you select him?—A. Just because of his reputation, and on account of his connection with these—and on account of his intimate knowledge of stock-brokerage problems.

Q. After you left the clerk's office what, if anything, did you do with regard to the employment of your counsel?—A. I left there about a quarter of 6. Going down to my own office I stopped in and saw Mr. Florenz McAuliffe.

Q. Why did you do that?—A. Because, in thinking the matter over, I decided that I had known Mr. McAuliffe more intimately than I knew Mr. Ackerman, and I decided that I would rather have him as my counsel, and I called on him to find out whether he was in a position to serve as such.

Q. At that time were you acquainted with the order of the court appointing you as receiver?—A. I had read it.

Q. I will ask you if you understood from that order that you had a right to employ your counsel?—A. It so stated.

Q. The order so stated?—A. Yes.

Mr. Manager BROWNING. Mr. President, we should like to offer a copy of that order which was marked as an exhibit in the hearing before the committee of the House.

The PRESIDING OFFICER. It will be received and filed with the clerk. You may proceed.

By Mr. Manager BROWNING:

Q. What time did you get to Mr. McAuliffe's office?—A. About 6 o'clock.

Q. Did you have any prearranged engagement with him?—A. I had none.

Q. Did you know whether or not he was there before you reached the office?—A. I did not.

Q. When did you see the respondent next?—A. I saw the respondent the next morning at 9:30 at his chambers.

Q. I wish you would describe now the conference you had with the respondent at that time on the morning of the 12th?—A. When I went into the chambers of Judge Louderback, he asked me why I had not returned "last night", and I told him that I did not know that I was supposed to return the previous night. He told me that he had insisted—had told me to return the previous night, and I told him that apparently there was a misunderstanding, that I did not understand it as such, and, therefore, I came out the first thing in the morning to see him. There was considerable—some statements made by Judge Louderback relative to my delinquency. Then he turned to me and told me that he had accepted me as receiver on the recommendation of the plaintiff and the defendant in this case; that he ordinarily desired to have someone whom he knew in the matter; that inasmuch as he had appointed me receiver, that he felt that I should appoint as counsel someone whom he should suggest, and he named Mr. John Douglas Short. I told Judge Louderback that I did not know Mr. Short; that I felt, on account of the complex problems in this brokerage work, that I should want an attorney as counsel who was familiar with these stock brokers, who had them as their clients, and also that I felt that I should have somebody whom I knew personally.

Judge Louderback said, "Just exactly what I was afraid of. You went away and thought this matter over. If you had come back last night, the whole thing would have been obviated. In fact, I had Mr. Short here last night for you to meet him." I again told Judge Louderback that I was sorry, that apparently there was a misunderstanding. Judge Louderback then asked me whom I had in mind, and I said Mr. McAuliffe. With that Judge Louderback became very indignant, and threw his pencil on the table. He said, "That is just exactly what I thought. You went down and made your arrangements and I wished to see you before you had made any arrangements."

We then discussed the matter at some length. I assured the judge that the only thing I had in mind was to have competent counsel, one whom I knew and who understood these problems; and, on account of my bond, I thought I could not take the risk of somebody whom I did not know, because if they gave me improper advice I was the one who would take the responsibility. We discussed the matter at some length. Finally the judge came up to me and took me

by the coat and said, "I do not know whether you realize what a plum you have picked; do you realize that your fees will be somewhere between ten and eighty thousand dollars." I told Judge Louderback that I did not; in fact, I did not know even how they were based; that I was not concerned with my fees at that particular time; that I was only interested in the counsel. He then said to me, "Do you realize that I am the one who is going to set your fee?" I said, "I understand that."

We then discussed Mr. McAuliffe. He turned to me and said, "If I should send for your friend McAuliffe and tell him that there were not any fees in this case for him, I do not think he would be so anxious for the position." I told him that that was a matter between him and Mr. McAuliffe. He then asked me if I knew that he appointed receivers at frequent intervals. I told him that I understood that he did. He then said, "If you do this work properly, and something of a similar nature comes up, your name will undoubtedly be considered." I still talked to Judge Louderback and tried to explain to him the contracts and bonds that a brokerage office has in connection with full-paid securities, with their margin account and safe-keeping items and various other matters. I told him that I did not wish to take the time to talk with an attorney who was not familiar with the problems, because I wanted to start in immediately on the work. It was about 10 minutes past 10 at that time. Judge Louderback said he could not talk with me any longer, that he had to go on the bench. Leaving his chambers, he said to me, "Think the matter over for 2 or 3 days, come back and see me; there is no hurry about it." He also said, "Do not go to see any attorney or take any legal advice."

I walked with Judge Louderback from his chambers to the door of his court, and tried to explain to him how imminent this matter was, how important it was to have legal advice in order that I could take action. He again told me there was no hurry, to think the matter over and come back in 2 or 3 days' time and talk to him.

Q. What attorneys, if any, did he offer you in that conference?—A. John Douglas Short only.

Q. Did he mention the names of Pillsbury, Madison, and Sutro to you?—A. He did not.

Q. At that or any other time?—A. At that or at any other time.

Q. Did he offer Keyes & Erskine to you then?—A. He did not. He told me that John Douglas Short was in Keyes & Erskine's office, and I understood from his conversation that he was a clerk and not an associate in the firm.

Q. Did he offer you the firm of Sullivan, Roche?—A. He did not.

Q. Or Cushing & Cushing?—A. He did not. I know all those firms and I would have been only too happy to have had any one of them.

Q. Did he have anything to say about the qualifications of the attorney for this work?—A. When I stressed the matter of my counsel, he told me that I exaggerated the importance of it. He said any attorney in San Francisco could handle these matters.

Q. Did you observe his admonition not to talk to counsel about it before you saw him again?—A. I did.

Q. What time did you come back?—A. I came back at 12 o'clock with my partner, Mr. Hood.

Q. Did you see the respondent at that time?—A. I saw him as soon as he came off the bench. I followed him into his chambers.

Q. Did Hood go in with you?—A. No; he did not. He stayed in the anteroom.

Q. Did he try to go in with you?—A. He wanted to go in but he could not go.

Q. Why?—A. The judge would not permit him.

Q. What occurred between you and the respondent in that conversation?—A. I told Judge Louderback that I had thought the matter over ever since I left him that morning and that it was a matter of supreme importance and extreme urgency; that there were so many customers who were clamoring at the doors requesting permission to do certain things which required legal advice that I felt that I could not wait any longer, and I came out to him to see if we could not get the matter settled in regard to counsel. Judge Louderback turned to me and said, "If you cannot have your friend as counsel, do you wish to resign?" I told him that I understood that my name was put up by the petitioners and that the defendant in the case had agreed to the petition on condition that I should be receiver, and under the circumstances I felt in duty to them I should not resign. He then insisted that I should resign, and told me if I would step outside to his clerk that she would prepare my resignation and have me sign it. I told Judge Louderback that I felt in fairness to the persons who had put up my name that I should be permitted to go back and see them first and acquaint them with the conditions. I also told him that I felt under the circumstances that I should be permitted to talk to Mr. McAuliffe and explain the matter to him.

Q. In the conversation, did you try to talk with any other attorneys except Heller, Erhmann, White & McAuliffe?—A. We discussed that matter for a few moments and then Judge Louderback asked if I had any other attorney in mind. I named Lloyd Ackerman. He said, "It is all in the same family; not satisfactory."

Q. Was Lloyd Ackerman attorney for the stock exchange?—A. He was not.

Q. What instructions did you have from the respondent when you had that second conference on the 12th?—A. We talked about various things, and when I came to leave, inasmuch as we had been talking about other subjects, I again repeated to Judge Louderback my understanding that "I am to be permitted to go to Mr. Francis Brown and advise him of your request for my resignation, and also that I be permitted to talk to Mr. McAuliffe." He said, "I know exactly what is going to happen; if you talk to McAuliffe, he is going to come here to see me, and it is going to be very embarrassing for me." I left with the understanding that I was to be permitted to talk to both of these gentlemen.

Q. Did the judge in that conference offer you any other attorneys except John Douglas Short?—A. The only attorney that was offered to me by Judge Louderback was John Douglas Short.

Q. When did you next see or hear from the judge?—A. The following morning I received a telephone message from his secretary, Miss Berger, asking me to come out to see Judge Louderback at 12:45. That was on Thursday.

Q. Did you go there on that occasion?—A. I went out there and saw Judge Louderback in his chambers.

Q. What occurred in that conference?

Mr. CONNALLY. Mr. President, will the witness speak a little louder so that we may hear him.

The PRESIDING OFFICER. The Chair admonishes the witness to speak so that all Members of the Senate may hear. The Chair suggests that the witness lift his voice.

The WITNESS. What was the question?

By Mr. Manager BROWNING:

Q. What occurred in the conference that you had with respondent at 12:45 on the 13th?—A. Judge Louderback told me that he was very much disappointed; that he was not going to talk any longer, and he asked me if I wished to resign. I told him the same answer; that I thought, in view of the persons who had appointed me, that I could not resign. He then asked me if I had talked to Mr. McAuliffe, and he had advised me not to resign, and I said "yes." With that the judge stood up and opened his desk drawer and pulled out a paper all prepared and signed and handed it to me and said, "I now hand you herewith a formal notice of discharge as receiver for good cause." He said, "Do you understand?" I said, "No." He said, "In other words, you are 'fired'; you are 'canned'; you are out." Then he took me by the arm and thrust me out of his room and presented the copy to his secretary and asked that it be filed immediately in the clerk's office and went back to his chambers and slammed the door, and I was out.

Mr. Manager BROWNING. I offer at this time, Mr. President, a certified copy of the order of discharge.

The PRESIDING OFFICER. The order will be received and filed with the clerk.

By Mr. Manager BROWNING:

Q. In the evening after you left the clerk's office when you had qualified and went to see Mr. McAuliffe, did you go to your office any more that evening?—A. I did.

Q. Did you receive any telephone message from either the judge or the judge's secretary?—A. I had no telephone call there.

Q. The next morning, what time did you leave your office?—A. I left my office about 8 o'clock and went over to Russell-Colvin & Co.

Q. Before you left did you receive any telephone message from the judge or the judge's secretary?—A. I did not.

Q. After that time did you get any notice of any telephone message coming to your office from them?—A. My secretary did not phone me and tell me I had any message.

Q. When you went to the court room on the 11th at the time the petition was filed and you were appointed did you see H. B. Hunter there?—A. I saw him in the court room; yes.

Q. When did you see him with reference to the time that you were appointed by Judge Louderback?—A. While we were waiting, because Judge Louderback's court was in session. We all went into the court room to wait until court was adjourned. It so happened I sat down next to Mr. Hunter.

Q. Were you well acquainted with him?—A. I had known him for some time before that time.

Q. What was his business?—A. At that time he was the junior partner in the firm of William Cavalier & Co., stock brokers.

Q. What, if any, conversation took place between you and Mr. Hunter then?

Mr. LINFORTH. We object to that, Mr. President, as being hearsay and not binding on the respondent here.

The PRESIDING OFFICER. Do counsel contend that that is admissible?

Mr. Manager BROWNING. Yes; we do; on the theory that we have alleged a conspiracy that involves the judge, this man Hunter, and the man Leake, who, we contend, was the intermediary, and we think it is competent for us to show the attitude of this man Hunter at that time.

Mr. LINFORTH. May I add that after there has been some proof of conspiracy offered, then declarations of any one of them may be admissible; but until that foundation is laid and there is some proof tending to establish conspiracy, then, of course, the matter is purely hearsay; and I maintain that up to the present time no evidence has been offered in this case tending to show a conspiracy.

The PRESIDING OFFICER. Do the managers allege a conspiracy between the respondent and Mr. Hunter?

Mr. Manager BROWNING. Yes, sir.

Mr. LINFORTH. May I say I think counsel is mistaken in that. The only conspiracy alleged is a conspiracy between Mr. Leake and the respondent, and none whatever in regard to Mr. Hunter. I think if counsel will look at the pleadings he will find that to be so.

Mr. Manager BROWNING. Our allegation covers that, I am quite sure.

Mr. LINFORTH. If you will refer to it—or I will refer to it, if the Presiding Officer desires me to do so——

The PRESIDING OFFICER. The Chair is not able to read through the pleadings at this time to acquaint himself with all the allegations. The Chair will hear the testimony; and if it is not properly connected and the present occupant is in the chair, a motion to strike out the testimony will be received and will be ruled upon at that time.

Mr. Manager BROWNING. Very well.

The PRESIDING OFFICER. Proceed.

By Mr. Manager BROWNING:

Q. What was said to you at that time with regard to this case by Mr. Hunter, if anything?—A. Mr. Hunter asked me what I was out there for, explaining that he was——

Mr. LONG. Mr. President, I have been listening very attentively to what counsel said. What time is he talking about now?

Mr. Manager BROWNING. It is the occasion when the parties went to the judge for the first time and were waiting in his court room to get their audience to apply for the receivership on the morning of the 11th of March 1930.

Mr. HEBERT. Mr. President, the conspiracy alleged appears in article I, on page 5, of the print of the proceedings of the Senate which I have before me, wherein it says:

> In that the said Harold Louderback entered into a conspiracy with the said Sam Leake to violate the provisions of the California political code.

There appears to be no mention of anybody else, unless there is reference to it in some other part of the articles of impeachment.

The PRESIDING OFFICER. The Chair announced that he did not have time to read the articles of impeachment; but if at the conclusion of the testimony there is no connection between Mr. Hunter and the respondent tending to show a conspiracy, of course, the testimony will be stricken from the record.

Mr. LINFORTH. It will save some considerable time, no doubt, in the cross-examination of this witness if counsel at the present time is required to call attention any such allegation of conspiracy with Mr. Hunter. We maintain most respectfully that there is nothing in the articles of impeachment from beginning to end, as amended, other than the charge of conspiracy between Mr. Leake and the respondent.

The PRESIDING OFFICER. The Chair will adhere to the ruling; but unless the House managers show allegations warranting introduction of the testimony, if the present occupant of the chair is in the chair at the time, he will entertain a motion to strike from the record all of this testimony.

By Mr. Manager BROWNING:

Q. The question is, What conversation took place between you and Mr. Hunter at that time with regard to this case?

Mr. WHITE. Mr. President, would it be proper to ask counsel, for the benefit of the court, to indicate that part of the article of impeachment which alleges a conspiracy involving Mr. Hunter?

Mr. NORRIS. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The Senator from Nebraska will state the point of order.

Mr. NORRIS. As I understand, members of the court should not be allowed to participate in any argument.

The PRESIDING OFFICER. The point of order is sustained. Proceed, Mr. Manager.

By Mr. Manager BROWNING:

Q. State the conversation between you and Mr. Hunter at that time with regard to this case.—A. Mr. Hunter asked what I was doing out in that court and explained he was there as a member of the trial jury. I told him I was out there in connection with the Russell-Colvin matter, that my name had been presented as receiver and we were waiting to have an audience with Judge Louderback in the matter. He turned to me in a laughing way and said, "You do not want a good man as receiver?" I said, "I do not think that is necessary. That is taken care of."

The PRESIDING OFFICER. The witness is again admonished to speak louder so that members of the court may hear him.

By Mr. Manager BROWNING:

Q. Repeat what he said to you with regard to it.—A. Mr. Hunter turned to me and asked in a laughing manner if they did not want a good receiver, and I told him I thought it had already been taken care of.

Q. When did you take possession of the assets of the concern, if at all?—A. Wednesday morning, the 12th, immediately after my appointment I went to the office of Russell-Colvin and took possession of all the assets.

Q. Was that before you went back to see the respondent?—A. Before I went back.

Q. What assets did you take possession of at that time?—A. I advised the officers that I was in control, and I took over the safe deposit box in the bank covering the securities.

Q. How long after you were discharged before you were called on to turn over to the receiver the assets of the company?—A. About two weeks; I received an order of the court.

Q. Did you have any demand made on you before that time?—A. No.

Mr. Manager BROWNING. Take the witness.

Cross-examination by Mr. LINFORTH:

Q. Mr. Strong, had you at any time prior to this been appointed receiver in any matter?—A. I never had.

Q. This was your first appointment in any receivership matter?—A. Yes, sir.

Q. Before you were appointed in this particular matter you had been working in the capacity you stated for the Russell-Colvin Co.?—A. That is correct.

Q. And you had also been working in the capacity that you have stated for the San Francisco Stock Exchange?—A. That is correct.

Q. Were you in the employment of the San Francisco Stock Exchange at the time you were appointed receiver, regularly employed by it?—A. They were one of my clients; yes.

Q. And had been one of your clients for some years prior thereto?—A. That is correct.

Q. Had the San Francisco Stock Exchange—that is, the governing board of that exchange—prevailed upon you to act as receiver in this matter?—A. They had. They requested me to act.

Q. Did they do more than request you to act? Did they prevail upon you to act?—A. They requested me to act in the matter.

The PRESIDING OFFICER. Did they do more than request you to act?

The WITNESS. No; I would not say so.

By Mr. LINFORTH.

Q. Then I am not correct in saying that they prevailed upon you to act as such receiver?—A. They finally prevailed upon me; yes.

Q. They finally did prevail upon you to act?—A. Yes.

Q. In other words, when they first spoke to you about acting you did not want to act on account of your own personal engagements; is that right?—A. That is correct.

Q. Then the governing board of the stock exchange prevailed upon you to change your opinion and to act?—A. Simply on account of my intimate knowledge of the firm.

Q. No matter what the reason was, they did prevail upon you to act?—A. Yes.

Q. And you finally consented after they had so prevailed upon you?—A. That is correct.

Q. In addition to the governors of the San Francisco Stock Exchange Board prevailing upon you to act, you were also consulted by Mr. Francis Brown on the subject, were you not?—A. That is correct.

Q. He was then one of the attorneys for Russell-Colvin Co.?—A. That is right.

Q. Your relations with the stock-exchange board at this time and for some time prior thereto had been that at its request you were making daily reports to it of the condition of the Russell-Colvin Co.; is that right?—A. I have so stated.

Q. You knew at the time that you were appointed receiver that the firm of Heller, Ehrmann, White & McAuliffe were the regularly employed attorneys of the stock exchange, did you not?—A. I did.

Q. When it came to the question of attorneys whom did you first consult, Mr. Lloyd Ackerman or Mr. McAuliffe?—A. Mr. Lloyd Ackerman.

Q. Did you see him personally about the matter or was your communication by phone?—A. By phone.

Q. And that was the day before you were appointed receiver?—A. That is correct.

Q. That would be on Monday the 10th, Mr. Strong?—A. That is correct.

Q. Do you recall what time it was on Monday the 10th that you talked with Mr. Lloyd Ackerman on that subject?—A. Some time in the evening. I talked from my office.

Q. Did you ask him at that time in the event of your appointment as receiver if he would act for you?—A. Not in that language; no.

Q. What did you say to him on the subject?—A. I told him my name had been suggested as receiver and I wished to know whether he was in a position to act as my counsel in case I desired him.

Q. What did he say?—A. He said he would have to think whether there was any connection which would prevent him from acting as such.

Q. Did he tell you whether or not he would let you hear from him the next day?—A. Yes.

Q. Did you hear from him the next day on that subject?—A. No, sir.

Q. Did not he communicate with you the next day and tell you that he could and would act?—A. No, sir.

Q. You are positive of that?—A. I am absolutely positive of that.

Q. To refresh your recollection, Mr. Strong, if possible——A. To help you I will tell you what took place that night.

Q. No; I should rather you would answer my question. We will get at it in our own way. Did he, before you had spoken to anyone connected with the attorneys for the stock-exchange board, tell you that he would be glad to represent you as attorney for the receiver if you were appointed?—A. He did, on Monday night.

Q. My question was limited to whether or not he told you at any time before you had talked with anyone representing the stock-exchange board.—A. Who do you mean by representing the stock-exchange board?

Q. Mr. McAuliffe, Mr. Heller, Mr. Ehrmann, Mr. White, and Mr. Lloyd Dinkelspiel.—A. Yes; he talked to me before I spoke to any of them.

Q. He talked with you before you had talked with any of them and told you that he could and would act for you if you wished?—A. That is correct.

Q. Is that right?—A. That is correct.

Q. So that before you had talked with anyone connected with the firm of attorneys for the stock-exchange board you had not only talked to Lloyd Ackerman but you had also had his reply?—A. That is correct.

Q. After you had received word from Mr. Lloyd Ackerman that he could and would represent you, who talked to you about employing the firm of Heller, Ehrmann, White & McAuliffe, the attorneys for the stock-exchange board?—A. No one at any time.

Q. Had anyone representing the stock-exchange board, its board of governors, or anyone else, spoken to you on the subject of employing their law firm?—A. No, sir.

Q. What happened in the meantime, between the time that Mr. Ackerman reported that he was willing to accept the appointment and your calling on Mr. McAuliffe, that caused you to change your mind?—A. I have known Mr. McAuliffe much more intimately than I have Mr. Ackerman. After thinking the matter over and turning it over in my own mind, I decided I should prefer to have Mr. McAuliffe.

Q. You knew, when you first spoke to Mr. Lloyd Ackerman, that you had known Mr. McAuliffe for many years.—A. I had.

Q. And you knew at that time that he was one of the attorneys for the stock board, did you not?—A. That is right.

Q. Have you given us the full reason why, after getting word from Mr. Lloyd Ackerman that he could represent you, that you changed your mind and went to Mr. McAuliffe?—A. Yes, sir.

Q. At the time that you were in the chambers of the respondent, Judge Louderback, did not the judge tell you that if he appointed you, you would be an officer of the court?—A. I do not recall.

Q. You have no recollection on that subject? Did the judge at that time also say to you that if he appointed you as receiver, you must confer with the court on the appointment of your attorney?—A. He may have done so. I do not recall.

Q. You have no recollection on that point, either?—A. No.

Q. Did he not also at the same time ask you if you had already selected an attorney?—A. No, sir.

Q. He did not?—A. No, sir.

Q. And did he not also say to you at the same time, "And particularly any of the attorneys who are present here"?—A. He did.

Q. And what did you answer?—A. I told him I had no attorneys who were present in mind.

Q. Mr. Lloyd Dinkelspiel was present at that time, was he not?—A. He was.

Q. And he was one of the members of the firm of Heller, Ehrmann, White & McAuliffe?—A. He was; but I was naming Mr. McAuliffe, not the firm.

Q. Do you recall, at the time that you saw the respondent, Judge Louderback, on Wednesday, the 12th of March, that you told him that one of the reasons why you wanted Mr. McAuliffe as your attorney was because his firm represented the San Francisco Stock Board?—A. No, sir.

Q. You never told him that?—A. I told him he probably represented the San Francisco Stock Board, but that was not the compelling reason.

Q. No; but did you tell the judge at that interview that one of the reasons why you wanted Mr. McAuliffe was because his firm were the attorneys for the San Francisco Stock Board?—A. No; sir.

Q. Are you quite positive about that?—A. Quite positive.

Q. Have you read recently the testimony that was given by you in San Francisco in September of last year before the investigating body?—A. Yes, sir.

Q. Calling your attention to page 46, toward the bottom of the page—

Q. Did you ask him then if he had any personal objection to Mr. McAuliffe or the firm with which he was connected?—A. I did not ask that direct question; no.

Q. Did you offer any other counsel?—A. Judge Louderback asked me why I picked Mr. McAuliffe and I told him that I picked Mr. McAuliffe because I knew he was the attorney for a number of stockbrokers, was very familiar with their procedure and the rules and the law, and also their firm represented the stock exchange—

Do you remember giving that testimony?—A. Yes, sir.

Q. Is it correct that you told the judge at that time that one of the reasons why you wanted McAuliffe was because his firm represented the stock exchange?—A. The sole reason in mentioning the name of the stock exchange was simply to show his familiarity with the transactions, but it was not the impelling reason, because he was.

Q. Was one of the reasons why you wanted Mr. McAuliffe as your attorney because he was one of the attorneys that regularly represented the stock exchange?—A. Not in itself, but it might be of some assistance.

Q. Did you tell the judge at the time I have referred to that that was one of the reasons why you wanted Mr. McAuliffe?—A. It may have been. I do not recall.

Q. Would you care to read what I have read to you?——

Mr. Manager BROWNING. Mr. President, I insist that counsel is undertaking to put into the mouth of the witness what he never said on the former occasion. He did not say in that testimony that he told the judge that about Mr. McAuliffe at that time.

The PRESIDING OFFICER. The Chair thinks the cross-examination is proper. Proceed.

Mr. LINFORTH (to the Official Reporter). Will you read the last question?

The Official Reporter read as follows:

Q. Did you tell the judge at the time I have referred to that that was one of the reasons why you wanted Mr. McAuliffe?—A. It may have been. I do not recall.

Q. Would you care to read what I have read to you?

By Mr. LINFORTH:

Q. Would it refresh your memory if I handed you the record on that subject, Mr. Strong?—A. I do not think it is necessary.

Q. When you made that statement to the judge, did he not then say to you, in words or substance, "The whole matter is in a family circle. It is all the same family, the same people"?—A. I believe he did.

Q. That was after he had appointed you as receiver, you being an employee of the stock exchange, and after you had asked permission to employ its attorneys as yours. That is right; is it not?—A. May I correct that? I was not an employee of the stock exchange.

Q. Your firm was; was it not?—A. They were my clients; yes.

Q. Your firm was?—A. Yes.

Q. And it was after the judge had been so advised that he said to you, "The whole matter is too much of the same family. It is too close a proposition." Did not the judge tell you that?—A. I believe he did.

Q. And he gave you that as the reason why he did not want you to employ the regular attorneys of the stock exchange as your attorneys. That is correct; is it not?—A. That was the reason he gave; yes.

Q. That is what I am asking you, Mr. Strong. He gave you that as the reason why he did not want to accede to your request. That is correct; is it not?—A. Correct.

Q. Did not the judge, the respondent here, at that time in substance say to you this: That Heller, Ehrmann, White & McAuliffe were the attorneys for the exchange; that you were sponsored by the exchange; that if the exchange was mixed up with this situation, both you and the exchange would be in a position or feel that you would not want to bring it to light. Do you recall his telling you that?—A. Yes; and I told him that it was possible but highly improbable.

Q. The judge was telling you at that time, was he not, that the relations being so close, Russell-Colvin also being a suspended member of that firm, complications might come up, and it would be embarrassing to you and to him to appoint that firm? Did he not, in substance, tell you that?—A. He made that statement that you have repeated before.

Q. Yes, sir; and is it not a fact that when the judge reasoned with you in that way, you replied that what he said was possible, but it was not probable?—A. It was highly improbable.

Q. Did you not say, after the judge had reasoned in this way with you, that such a condition was possible, but it was not probable?

The PRESIDING OFFICER. The witness has answered the question. Answer it again, though. Proceed.

A. I said it was possible but highly improbable.

The PRESIDING OFFICER. Proceed.

Mr. BRATTON. Mr. President, I send forward a question to be propounded to the witness.

The PRESIDING OFFICER. The question will be read.

The legislative clerk read the question, as follows:

Q. You asked Mr. Ackerman to represent you, and he agreed to do so. You later selected Mr. McAuliffe. Why did you make the change, and why did you fail to tell Mr. Ackerman about it?

The WITNESS. As I stated, I knew Mr. McAuliffe more intimately than I did Mr. Ackerman. Both of them were very high gentlemen. It was my knowing Mr. McAuliffe more intimately that was one of the chief reasons why I decided to take Mr. McAuliffe. I phoned to Mr. Ackerman on Wednesday and told him of my change of my selection.

The PRESIDING OFFICER. Proceed.

Mr. LONG. Mr. President, does that answer the question? I understood the question to be why he did not tell Mr. Ackerman that he was going to get Mr. McAuliffe.

The PRESIDING OFFICER. The Senator will pardon the Chair if he reminds the Senator that under the rule questions must be submitted in writing.

Mr. LONG. I am talking about this question. Perhaps I misunderstood the question.

The PRESIDING OFFICER. The Chair suggests, if the Senator will pardon him, that the Senator prepare the question that he desires submitted. Proceed as fast as you can.

By Mr. LINFORTH:

Q. When Mr. Ackerman had advised you that he was willing to accept the employment, what did you say to him then—that that was satisfactory to you?—A. I told him that I would let him know.

Q. What time elapsed between the time that he told you he was willing to accept the appointment and the time you went down and talked with Mr. McAuliffe?—A. About 24 hours.

Q. You had heard from Mr. Ackerman 24 hours before your appointment that he was willing to act for you? Is that your present recollection?—A. About that; yes—the night before.

Q. And how long was it before you saw Mr. McAuliffe that you notified Mr. Ackerman that you did not want him?—A. I believe it was the following afternoon.

Mr. BRATTON. Mr. President, I send forward another question to be propounded to the witness.

The PRESIDING OFFICER. If it will not interrupt counsel, the question will be read.

Mr. LINFORTH. No; it will not interrupt me.

The legislative clerk read the question, as follows:

Q. At the time you telephoned Mr. Ackerman asking him to represent you, and he agreed to do so, you knew then that you were better acquainted with Mr. McAuliffe than you were with Mr. Ackerman; did you not?

The WITNESS. I did.

The PRESIDING OFFICER. Proceed, Mr. Counsel.

By Mr. LINFORTH:

Q. What was the comparative length of your acquaintance with the two gentlemen—Mr. Ackerman and Mr. McAuliffe?—A. I do not recall exactly; a number of years in both instances.

Q. I do not want to be exact; but approximately how long had you known Mr. Florenz McAuliffe?—A. About 5 or 6 years.

Q. Five or six years before that time?—A. Right.

Q. And how long had you known Mr. Ackerman?—A. About the same length of time.

Q. Then in saying that you knew one better than the other, you did not mean with reference to time?—A. No, sir.

Q. Had you had Mr. McAuliffe as your attorney on prior matters?—A. Not any of my affairs; no.

Q. Had you had Mr. Ackerman as your attorney on prior matters?—A. No, sir.

Q. But you knew that, during all of your acquaintanceship with Mr. McAuliffe, he or his firm were the regular attorneys of the stock board?—A. I have so stated.

Q. I understood you to say that in none of his talks with you did the judge, the respondent, suggest any counsel except Mr. Short.—A. That is quite correct.

Q. Had you, before you talked with Mr. McAuliffe about his employment, talked with the other partner, Mr. Dinkelspiel, on the subject?—A. Yes; I had mentioned it to him after I had qualified, and when I was leaving the post-office building. He was in a group with other persons, and I believe he overheard me.

Q. Did you talk with Mr. Lloyd Dinkelspiel of that firm about their probable appointment before you talked to Mr. McAuliffe?—A. Yes; he was present and heard me talk about it.

Q. Did you tell him that you had already talked with Mr. Ackerman on the same subject?—A. I do not believe I had; no.

Q. Do I understand you to say, Mr. Strong, that at no time did the respondent judge suggest to you that either one of the firms mentioned here would be satisfactory to him?—A. Which firms have you in mind?

Q. Sullivan, Sullivan & Roche have been mentioned; Cushing & Cushing have been mentioned; and Pillsbury, Madison & Sutro have been mentioned.—A. Positively at no time was any attorney mentioned to me except John Douglas Short.

Q. Your recollection is clear?—A. Absolutely clear.

Q. And definite on that subject? I understood you to say that you did not understand the judge's reference to coming back after you had qualified to mean that afternoon. Is that right?—A. He simply suggested in an offhand manner, "When you have qualified come back and see me", with no reference as to time.

Q. Did you understand that to mean that afternoon or the next day?—A. At any time after I had qualified.

Q. Did you understand, from what was said, that you were not to come back that afternoon?—A. Not necessarily; no.

Q. After you qualified you talked with the lawyers who were along with you as to whether you should go in at that time and see the judge, did you not?—A. I did.

Q. You have said that today here, have you not?—A. I have.

Q. So you had in mind at that very time, did you not, the possibility that the judge meant that very afternoon after you qualified, had you not?—A. He asked me to come back and see him; but on account of the lateness of the hour, I came back the next morning.

Q. Yes; but you have said, have you not, Mr. Strong, that when you finished qualifying, and before you left the building, you talked with Mr. Brown and Mr. Dinkelspiel and the other gentlemen about whether you should go in and see the judge that afternoon?—A. That is correct.

Q. Is not that true?—A. That is correct.

Q. So you had the thought in mind at that time, did you not, that that was the time to see the judge?—A. If the hour permitted.

Mr. LONG. Mr. President, will counsel permit me to send up a question?

The PRESIDING OFFICER. Would it disturb counsel to have a question propounded?

Mr. LINFORTH. Not a particle.

The PRESIDING OFFICER. The question will be read.

The Chief Clerk read as follows:

Q. Is it not a fact that you wanted Mr. McAuliffe for attorney because his firm were attorneys for the stock exchange, and the stock-exchange officers asked you to not employ Ackerman, but McAuliffe?

The WITNESS. That is absolutely not so.

Mr. LINFORTH. May I resume?

The PRESIDING OFFICER. You may proceed.

By Mr. LINFORTH:

Q. Did you take up with the stock exchange, or anyone connected with it, the appointment of Lloyd Ackerman?—A. I did not.

Q. Did you take up with the stock exchange, or anyone connected with it, the fact that you had already talked to Mr. Ackerman on the subject?—A. I had not.

Q. When the judge in chambers suggested to you the name of John Douglas Short, did he at that time tell you he was connected with the firm of Keyes & Erskine?—A. I understood that he was connected with Keyes & Erskine in a minor capacity.

Q. You told the judge at that time you did not know that firm?—A. I told him I did not know John Douglas Short. I knew of the firm.

Q. You knew of the firm. Did you know whether or not that firm had represented stockbrokers in stock transactions for years before?—A. I did not at that time.

Q. Did you know that they had represented Cavalier & Co. for some years before?—A. I did not know that at that time.

Q. Did you tell the judge that you would make some investigation and see whether or not Mr. Short of that firm was satisfactory?—A. I did not.

Q. In other words, you told the judge, without making any investigation whatever, you would not accept him. Is that right?—A. I did not tell him that I would not accept him at any time.

Q. You told him that you would not accept anyone but Mr. McAuliffe, did you not?—A. I did not.

Q. Whom did you qualify that by?—A. I told him that all I wanted was a man whom I knew and who had the reputation and the experience in stock-brokerage work; that that was all I was after.

Q. Did he not tell to you at that time that Mr. Erskine, of Keyes & Erskine, was regularly doing that work?—A. He did not.

Q. Did you ask him whether they were?—A. I did not.

Q. When you called on him Wednesday morning following your appointment, and after you told him that you had been

down and employed the stock-exchange firm, the judge did say to you, "That was the very thing I was trying to avoid", did he not?—A. Let me correct the statement. I had not employed Mr. McAuliffe at that time. I could not.

Q. I am calling attention, Mr. Strong, to the day after your appointment.—A. Right.

Q. I understood you to say you were appointed late on Tuesday.—A. Right.

Q. And the judge at some time late on Tuesday had requested you to return after you had qualified?—A. Right.

Q. And you did not return until the following morning, Wednesday. Is that right?—A. Right.

Q. Then Wednesday morning when you called you told the judge that you had been down the night before employing the stock-exchange firm, did you not?—A. I told the judge that I had been down and saw Mr. McAuliffe.

Q. With a view of employing his firm, did you not?—A. Right.

Q. Did not the judge then say to you, "That is exactly what I tried to avoid by requesting you to come back last night"?—A. That is correct.

Q. I understood you to answer just a moment ago that you had not employed the stockbrokers' attorney on Tuesday night. Is that right?—A. I had not employed him. I could not without the approval of the judge.

Q. But had you gone as far as you could in the appointment?—A. I asked him if he would be willing to represent me as my counsel.

Q. And he told you what?—A. He told me he would.

Q. And you told him that was satisfactory if the court would approve it?—A. Right.

Q. So that that was done on Tuesday, the very day you were appointed, was it not?—A. Correct.

Q. And the judge said to you, upon your telling him what had taken place, that if you had returned the night before, that unfortunate situation would not exist, did he not? I do not mean in words, but in substance, Mr. Strong.—A. He told me that if I had returned the night before, that that would have been obviated.

Q. That that would have obviated that situation. That is what he told you?—A. Correct.

Q. Did he tell you, when you went there Wednesday morning, the day after you were appointed, that already, before you got there, Mr. White, of the Heller, Ehrmann, White & McAuliffe firm, had been to see him over your appointment?—A. No, sir; he did not.

Q. You made some reference here today to the judge saying something to you about what could be done on fees. I did not quite catch that. Would you be kind enough to repeat it?—A. He stated to me, "I do not think you realize what a plum you have picked. You know your fees will be somewhere between ten thousand and eighty thousand dollars."

Q. That is sufficient for my purpose. He stated to you that your fees would be somewhere between 10,000 and 80,000?—A. That is correct.

Q. That was the range he made, between 10 and 80?—A. Yes, sir.

Q. You are quite sure of that?—A. Yes, sir.

Q. When you left the courthouse on the night of your appointment without going back to see the judge, what time did you get to Mr. McAuliffe's office?—A. About 6 o'clock.

Q. You did not go to see the judge because, I think you said, it was too late?—A. That is correct.

Q. But not too late to see Mr. McAuliffe?—A. Mr. McAuliffe is a late worker.

Q. Had you an appointment with McAuliffe for that evening?—A. I had not.

Q. You just took a chance on finding him in, Mr. Strong?—A. That is it exactly.

Q. There is not any question in your mind, is there, but what the judge did say to you after he had approved your bond in words substantially this, "When you qualify, come back and see me"?—A. That is correct.

Q. And you qualified about what time?

The PRESIDING OFFICER. That is in the record several times.

Mr. LINFORTH. Is it in? Pardon me, Mr. Chairman.

By Mr. LINFORTH:

Q. I understood you to say today that when you called on the judge on Thursday, the 13th, which was the day of your removal, he asked you whether McAuliffe told you not to resign.—A. He asked me if I had asked Mr. Auliffe and if he advised me not to resign, and I said he did.

Q. And that was the fact, Mr. McAuliffe had advised you not to resign?—A. That is correct.

Mr. LONG. Mr. President, may I send a question to the desk?

The PRESIDING OFFICER. Would counsel consent to be interrupted for the propounding of a question?

Mr. LINFORTH. Certainly.

The PRESIDING OFFICER. The interrogatory will be read.

The Chief Clerk read as follows:

Q. In view of your last answer, please answer this question "yes" or "no." Did you not tell the judge you would not employ any of the lawyers present, including a member of the McAuliffe firm? Then did you not, after having consulted Ackerman and receiving his acceptance, go and employ McAuliffe, a member of whose firm was present when you agreed to exclude attorneys present from consideration?

Mr. BROWNING. Mr. President, I suggest that the question should be divided.

The PRESIDING OFFICER. That is for the witness to determine. If it is not intelligible to him and he desires to have it divided, it may be done.

The WITNESS. I would appreciate that.

The PRESIDING OFFICER. The clerk will read the first part of the question.

The Chief Clerk read as follows:

Q. In view of your last answer, please answer this question "yes" or "no." Did you not tell the judge you would not employ any of the lawyers present, including a member of the McAuliffe firm?

The WITNESS. Yes.

The Chief Clerk read as follows:

Q. Then did you not, after having consuled Ackerman and receiving his acceptance, go and employ McAuliffe, a member of whose firm was present when you agreed to exclude attorneys present from consideration?

The WITNESS. I was engaging Mr. McAuliffe and not his firm.

Mr. LINFORTH. Just a question or two further and I am through. From the work that you had done for the Russell-Colvin Co. you knew, did you not, that their records were not of the best?—A. They were pretty good.

Q. But you knew they were not of the best, did you not?—A. I have seen better; yes.

Mr. LINFORTH. I think that is all.

Redirect examination:

The PRESIDING OFFICER. Is there further reexamination?

Mr. Manager BROWNING. Yes, Mr. President.

In view of the question asked by the Senator from Louisiana [Mr. LONG] I will ask the witness if the judge in his statement to you asked you if you had employed any attorney who was present or if you would employ any attorney who was present?

Mr. LINFORTH. I ask to have that question read. I did not get it.

Mr. Manager BROWNING. I will ask the question again.

At the time the judge referred to the attorneys who were present, did he ask you if you had employed any attorney present or if you intended to employ any attorney present?—A. He asked me if I had in mind any of the persons present as my attorneys; that is true.

Q. And you told him you did not?—A. I told him that I did not.

Q. Did you employ Lloyd Ackerman in your telephone conversation with him on the night of the 10th, on Monday, or did you ascertain whether he would be available?

Mr. LINFORTH. We object to that. That is calling for the opinion of the witness or his conclusion. He may state the fact, but he should not be permitted to go beyond that.

The PRESIDING OFFICER. The record shows that the witness has answered that question several times, so it is unnecessary to repeat it. Proceed with the questioning.

Mr. Manager BROWNING. Mr. President, with all due deference, there is some misunderstanding on the part of the witness as to the question asked by the Senator from New Mexico. We have a feeling that he should have a chance to clear that up.

The PRESIDING OFFICER. The witness answered very succinctly about his interview with Mr. Ackerman and stated what occurred, and the kind of arrangement which was entered into. If there is something other that he desires to elaborate, the Chair will permit it; but that question was fully answered.

By Mr. Manager BROWNING:

Q. When you testified that, after you had fully qualified, you talked to Lloyd Dinkelspiel with regard to the employment of Mr. McAuliffe, I will ask you to state whether or not at that time you inquired if there would be any conflict between his acting as attorney for the stock exchange and representing you as the receiver?—A. I discussed the matter myself with the three or four persons who were present and told them I had in mind Mr. Ackerman or Mr. McAuliffe, that I thought that possibly, on account of the fact that Mr. Lloyd Dinkelspiel was present in the room, Mr. McAuliffe might be disqualified. I was told by the persons present that they did not believe so. I asked them if Mr. McAuliffe was not of that firm. I had not known Mr. Dinkelspiel up to that time.

Q. Was anything said to you at that time as to whether or not there was a conflict between his representing the stock exchange and also the receiver?—A. I had asked Mr. Dinkelspiel whether he thought there might be any conflict at all between the interests of his firm as representative of the stock exchange and as my counsel, and he assured me that he could not understand any reason why there should be.

Mr. Manager BROWNING. That is all, Mr. President.

The PRESIDING OFFICER. The witness is excused. Do the managers or counsel for the respondent desire that the witness be retained or may he be excused?

Mr. Manager BROWNING. We should like to notify him in the morning.

Mr. LINFORTH. We announce on behalf of the respondent that we do not desire to retain the witness.

The PRESIDING OFFICER. The witness will return tomorrow morning.

Mr. Manager BROWNING. Mr. President, pursuant to the stipulation entered into by counsel for respondent and the managers on the part of the House, we desire at this time to read the testimony given by W. S. Leake at the hearing in San Francisco last September.

The PRESIDING OFFICER. If the testimony offered is in pursuance of a stipulation already entered into, the manager may proceed.

Mr. LINFORTH. We have not the slightest objection to it, Mr. President, with the understanding that Mr. Leake will appear in obedience to the subpena which is being served upon him. We do not want merely a part of his testimony in the record.

The PRESIDING OFFICER. The Chair cannot make a ruling with those qualifications. Do counsel for the respondent insist that the paper which has been signed by their respective parties, the stipulation, permits the reading of that testimony regardless of the attendance of Mr. Leake, or is it conditional?

Mr. LINFORTH. The stipulation provides that it shall only be operative in the event that Mr. Leake is not here.

Mr. Manager BROWNING. Yes; but Mr. President, I do not feel that we should be hampered in the orderly presentation of our case because Mr. Leake in fact is not here. I think that the terms and qualifications of the stipulation have been fulfilled when he failed to appear as subpenaed. He was subpenaed to be here yesterday.

The PRESIDING OFFICER. Will counsel read the stipulation?

Mr. Manager BROWNING. It is as follows:

It is further stipulated that the testimony of W. S. Leake taken at the hearing above referred to may be read upon said trial by either party hereto with the same force and effect as if the said witness were present and testified in person. This stipulation, however, insofar as the said W. S. Leake is concerned, is without waiver by either party hereto to insist upon the attendance of said Leake before the court above referred to, and shall become operative only in the event of the nonappearance of the said Leake at Washington before the said Court of Impeachment.

The PRESIDING OFFICER. That it shall be operative only upon his nonappearance.

Mr. Manager BROWNING. Yes, sir.

Mr. HANLEY. The stipulation, we claim, Mr. President—I am not speaking loud, for the Chair is to rule on this point—means that the testimony will only be read in the event Leake is not present. Who says he will not be present? Do counsel say so? No. I understood this morning that the Vice President was taking up the question of having Leake, with a trained nurse, appear here. Why not make one bite of the cherry, when we will have the whole matter here? Let us have Leake here, and then, if he is not here, let us live up to the stipulation.

The PRESIDING OFFICER. In view of the statement of counsel that the matter has been brought to the attention of the Vice President, the Chair will not rule upon the question and will ask the managers on the part of the House to proceed with some other witness.

Mr. Manager BROWNING. Mr. President, in the orderly presentation of our case we feel that it is almost imperative for us to present Leake's testimony at this time. The event, as we understood it, was his absence when he was subpenaed to be here. We are not in any way responsible for his failure to appear. Counsel for the respondent will have opportunity to cross-examine him and present any further testimony if he does appear, of which we have no assurance at all.

The PRESIDING OFFICER. May the Chair ask counsel if the witness, because of illness or untimely death, should not be present, if he would insist that the testimony would be admissible?

Mr. Manager BROWNING. Yes, sir; under the stipulation it would be because it is agreed that either party may read his testimony in the event of his nonappearance.

The PRESIDING OFFICER. If counsel have some other witness, they had better proceed with him. The Vice President having in part considered this matter, the Chair feels a delicacy in going further in the matter.

Mr. Manager BROWNING. Very well. Call Mr. White.

Mr. ROBINSON of Arkansas. Mr. President, if the court desires to suspend the impeachment proceedings, I think we might follow that course and proceed with legislative business.

The PRESIDING OFFICER. Is that agreeable to the managers on the part of the House and is it agreeable to counsel representing the respondent?

Mr. Manager BROWNING. It is absolutely agreeable to us.

Mr. LINFORTH. It is agreeable to us.

The PRESIDING OFFICER. Without objection, then, the Senate sitting as a Court of Impeachment will stand adjourned until 10 o'clock tomorrow morning, at which time it will reconvene.

Thereupon (at 4 o'clock and 10 minutes p.m.) the Senate sitting as a Court of Impeachment adjourned until tomorrow, Wednesday morning, May 17, at 10 o'clock a.m.

LEGISLATIVE SESSION

The Senate, pursuant to the order for a recess entered yesterday, resumed legislative session.

MESSAGE FROM THE PRESIDENT

During the impeachment proceedings, on motion of Mr. ROBINSON of Arkansas, and by unanimous consent, the Senate sitting as a Court of Impeachment took a recess in order to receive, as in legislative session, a message in writing

from the President of the United States, which was communicated to the Senate by Mr. Latta, one of his secretaries.

CALL OF THE ROLL

Mr. ROBINSON of Arkansas. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Adams | Copeland | Kendrick | Reynolds |
| Ashurst | Costigan | Keyes | Robinson, Ark. |
| Austin | Couzens | King | Robinson, Ind. |
| Bachman | Cutting | La Follette | Russell |
| Bailey | Dickinson | Lewis | Schall |
| Bankhead | Dieterich | Logan | Sheppard |
| Barbour | Dill | Lonergan | Shipstead |
| Barkley | Duffy | Long | Smith |
| Black | Erickson | McAdoo | Steiwer |
| Bone | Fess | McCarran | Stephens |
| Borah | Fletcher | McGill | Thomas, Okla. |
| Bratton | Frazier | McKellar | Thomas, Utah |
| Brown | George | McNary | Townsend |
| Bulkley | Glass | Metcalf | Trammell |
| Bulow | Goldsborough | Murphy | Tydings |
| Byrd | Gore | Neely | Vandenberg |
| Byrnes | Hale | Norris | Van Nuys |
| Capper | Harrison | Nye | Wagner |
| Caraway | Hastings | Overton | Walcott |
| Carey | Hatfield | Patterson | Walsh |
| Clark | Hayden | Pittman | Wheeler |
| Connally | Hebert | Pope | White |
| Coolidge | Johnson | Reed | |

The VICE PRESIDENT. Ninety-one Senators have answered to their names. A quorum is present.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House had passed the bill (S. 753) to confer the degree of bachelor of science upon graduates of the Naval Academy, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed without amendment the following bills of the Senate:

S. 73. An act to authorize the Comptroller General to allow claim of district no. 13, Choctaw County, Okla., for payment of tuition for Indian pupils; and

S. 1582. An act to amend section 1025 of the Revised Statutes of the United States.

The message further announced that the House had passed bills of the following titles, in which it requested the concurrence of the Senate:

H.R. 4014. An act to authorize appropriations to pay in part the liability of the United States to the Indian pueblos herein named, under the terms of the act of June 7, 1924, and the liability of the United States to non-Indian claimants on Indian pueblo grants whose claims, extinguished under the act of June 7, 1924, have been found by the Pueblo Lands Board to have been claims in good faith; to authorize the expenditure by the Secretary of the Interior of the sums herein authorized and of sums heretofore appropriated, in conformity with the act of June 7, 1924, for the purchase of needed lands and water rights and the creation of other permanent economic improvements as contemplated by said act; to provide for the protection of the watershed within the Carson National Forest for the Pueblo de Taos Indians of New Mexico and others interested, and to authorize the Secretary of Agriculture to contract relating thereto and to amend the act approved June 7, 1924, in certain respects; and

H.R. 4494. An act authorizing a per capita payment of $100 to the members of the Menominee Tribe of Indians of Wisconsin from funds on deposit to their credit in the Treasury of the United States.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate a petition of 245 citizens of the State of California, praying for the passage of legislation to restore to all veterans who were actually disabled in the military or naval service the former benefits, rights, privileges, ratings, schedules, compensation, presumptions, and pensions heretofore enjoyed by them and existent prior to the passage of the so-called "Economy Act", which was referred to the Committee on Appropriations.

He also laid before the Senate resolutions adopted by the executive board of the Georgia Federation of Business and Professional Women's Clubs, deploring the removal of Miss Jessie Dell as United States Civil Service Commissioner and commending Miss Dell "for her highly ethical conduct in not participating in partisan politics during the recent Presidential campaign", which were referred to the Committee on Civil Service.

He also laid before the Senate a letter in the nature of a memorial from L. M. Fournet, superintendent of the Louisiana State Penitentiary, Angola, La., opposing continuation of the investigation by the Special Committee of the Senate to Investigate Campaign Expenditures of the Louisiana Senatorial Election of 1932, which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

He also laid before the Senate resolutions adopted by the San Francisco County (Calif.) Council of the Veterans of Foreign Wars of the United States condemning the so-called "bonus marches" on Washington by veterans or alleged veterans, which were referred to the Committee on Finance.

He also laid before the Senate a resolution adopted by Westchester County (N.Y.) District Council, United Brotherhood of Carpenters and Joiners of America, favoring the passage of legislation establishing the 6-hour day in industry, which was ordered to lie on the table.

He also laid before the Senate a resolution adopted at a mass meeting held under the auspices of the Thirty Hour League of America in Los Angeles, Calif., favoring the principle of the 6-hour day and the 5-day week, with the highest possible compensation to be paid to the largest number of those who need employment; also endorsing the withholding of "Reconstruction Finance Corporation aid to institutions that fail to make substantial reduction in the gigantic salaries now paid to executives and who refuse to justiy compensate their employees", which was ordered to lie on the table.

He also laid before the Senate resolutions adopted by the Tennessee Valley Association (composed of 25 cooperating business, fraternal, and civic organizations), of Chattanooga, Tenn., favoring the passage of legislation to completely carry out the program of the President relative to the conservation and development of water-power resources, and deploring modification of proposed Muscle Shoals legislation so as to restrict the Tennessee Valley Authority with respect to the construction of power dams, the acquiring, condemning, or construction of transmission lines, or the engaging in such other undertakings as may be necessary, in the judgment of the President, to the full development of the Tennessee Basin's resources for the benefit of all the people, which were ordered to lie on the table.

Mr. COPELAND presented a resolution adopted by Hollis-Bellaire Post, No. 980, the American Legion, Department of New York, Jamaica, N.Y., favoring increase in second-class postage rates to such extent as may be necessary to defray the actual cost of handling this class of mail matter and the discontinuance of subsidies in the form of contracts for carrying the mails by steamship and air transport companies, which was referred to the Committee on Post Offices and Post Roads.

He also presented a resolution adopted by the Alumni Association of St. Francis College, of Brooklyn, N.Y., protesting against recognition of the Soviet Government of Russia, which was referred to the Committee on Foreign Relations.

He also presented a resolution adopted by the Geraldine Club, of New York City, N.Y., calling attention to certain public utterances of Mr. Ramsay MacDonald, the British Premier, relative to the Irish Free State, and opposing the cancelation or further reduction of debts owed to the United States by foreign nations, which was referred to the Committee on Foreign Relations.

Mr. DILL presented a memorial of sundry citizens of Spokane, Wash., remonstrating against the reduction or furloughing of officers or enlisted personnel of the Army, Navy, or Marine Corps, suspension of the National Guard and Reserve Officers' Training Corps training camps, suspension

of Federal aid to military schools, and reduction in the pay of Army, Navy, or Marine Corps Air Service flying officers, which was referred to the Committee on Appropriations.

VETERANS' BENEFITS

Mr. ROBINSON of Indiana. Mr. President, I present a petition signed by many citizens of the State of California, praying that Congress restore to service-connected disabled veterans their former benefits, rights, privileges, ratings, schedules, compensation, presumptions, and pensions, and ask that it may be referred to the appropriate committee.

The VICE PRESIDENT. Without objection, the petition will be received and referred to the Committee on Appropriations.

REPORTS OF COMMITTEES

Mr. STEIWER, from the Committee on Public Lands and Surveys, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 284. An act authorizing the conveyance of certain lands to school district no. 28, Deschutes County, Oreg. (Rept. No. 74); and

S. 285. An act to authorize the addition of certain lands to the Ochoco National Forest, Oreg. (Rept. No. 75).

Mr. McKELLAR (for Mr. GLASS), from the Committee on Appropriations, to which was referred the bill (H.R. 5389) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes, reported it with amendments and submitted a report (No. 76) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FESS:

A bill (S. 1700) to amend the act entitled "An act to enable the George Washington Bicentennial Commission to carry out and give effect to certain approved plans", approved February 21, 1930, as amended; to the Committee on the Library.

By Mr. HALE:

A bill (S. 1701) correcting the naval record of Frank J. Curran (with accompanying papers); to the Committee on Naval Affairs.

By Mr. REED (for Mr. DAVIS):

A bill (S. 1702) for the relief of H. Bluestone; to the Committee on Claims.

By Mr. BONE:

A bill (S. 1703) for the relief of William Smith; to the Committee on Claims.

(By request.) A bill (S. 1704) to secure to unemployed American citizens the right to work advantageously for themselves in the production and mutual exchange of food, shelter, clothing, and commodities; to the Committee on Finance.

By Mr. NYE:

A bill (S. 1705) to amend the Air Mail Act of February 2, 1925, as amended by the acts of June 3, 1926, May 17, 1928, and April 29, 1930, further to encourage commercial aviation; to the Committee on Post Offices and Post Roads.

By Mr. COPELAND:

A bill (S. 1706) granting a pension to Vincent San Filipo; to the Committee on Pensions.

By Mr. OVERTON:

A bill (S. 1707) for the relief of Carlos C. Bedsole; to the Committee on Public Lands and Surveys.

By Mr. CLARK:

A bill (S. 1708) for the relief of the Mississippi Valley Trust Co., of St. Louis, Mo.; and

A bill (S. 1709) for the relief of the Mercantile Commerce Bank & Trust Co., formerly Mercantile Trust Co., of St. Louis, Mo.; to the Committee on Claims.

HOUSE BILLS REFERRED

The following bills were each read twice by their titles and ordered to be placed on the calendar or referred, as indicated below:

H.R. 4014. An act to authorize appropriations to pay in part the liability of the United States to the Indian pueblos herein named, under the terms of the act of June 7, 1924, and the liability of the United States to non-Indian claimants on Indian pueblo grants whose claims, extinguished under the act of June 7, 1924, have been found by the Pueblo Lands Board to have been claims in good faith; to authorize the expenditure by the Secretary of the Interior of the sums herein authorized and of sums heretofore appropriated, in conformity with the act of June 7, 1924, for the purchase of needed lands and water rights and the creation of other permanent economic improvements as contemplated by said act; to provide for the protection of the watershed within the Carson National Forest for the Pueblo de Taos Indians of New Mexico and others interested, and to authorize the Secretary of Agriculture to contract relating thereto; and to amend the act approved June 7, 1924, in certain respects; to the calendar.

H.R. 4494. An act authorizing a per capita payment of $100 to the members of the Menominee Tribe of Indians of Wisconsin from funds on deposit to their credit in the Treasury of the United States; to the Committee on Indian Affairs.

AMENDMENT TO INDEPENDENT OFFICES APPROPRIATION BILL

Mr. ROBINSON of Arkansas submitted an amendment proposing that the Botanic Garden, together with all records, property, and personnel pertaining thereto, be transferred to the Department of Agriculture, effective the first day of the second month following the enactment of this act, and the appropriations for the support thereof are hereby made available to the Department of Agriculture, intended to be proposed by him to House bill 5389, the independent offices appropriation bill, which was ordered to lie on the table and to be printed.

REGULATION OF BANKING—AMENDMENTS

Mr. CONNALLY submitted two amendments intended to be proposed by him to the bill (S. 1631) to provide for the safer and more effective use of the assets of Federal Reserve banks and of national banking associations, to regulate interbank control, to prevent the undue diversion of funds into speculative operations, and for other purposes, which were ordered to lie on the table and to be printed.

BACHELOR OF SCIENCE DEGREE FOR NAVAL ACADEMY GRADUATES

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 753) to confer the degree of bachelor of science upon graduates of the Naval Academy, which were to strike out all after the enacting clause and insert:

That the Superintendents of the United States Naval Academy, the United States Military Academy, and the United States Coast Guard Academy may, under such rules and regulations as the Secretary of the Navy, the Secretary of War, and the Secretary of the Treasury may prescribe, confer the degree of bachelor of science upon all graduates of their respective academies.

And to amend the title so as to read: "An act to confer the degree of bachelor of science upon graduates of the Naval, the Military, and the Coast Guard Academies."

Mr. TRAMMELL. I move that the Senate disagree to the amendments of the House, ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice President appointed Mr. TRAMMELL, Mr. RUSSELL, and Mr. HALE conferees on the part of the Senate.

MUSCLE SHOALS—CONFERENCE REPORT

Mr. SMITH. Mr. President, I ask that the conference report on the Muscle Shoals bill be laid before the Senate.

The VICE PRESIDENT laid before the Senate the report of the committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5081) to provide for the common defense; to aid interstate commerce by navigation; to provide flood control; to promote the general welfare by creating the Tennessee Valley Authority; to operate the Muscle Shoals properties;

and to encourage agricultural, industrial, and economic development.

The VICE PRESIDENT. The conference report was read on yesterday. The question is on agreeing to the report.

The report was agreed to.

JOHN BOYD THACHER COLLECTION—OPINION OF COURT OF APPEALS

Mr. FESS. Mr. President, in 1927 the widow of John Boyd Thacher, of Albany, N.Y., died. She had made a will leaving to the Library of Congress a very valuable collection of books which had belonged to Mr. Thacher. That collection includes, in addition to books, many very valuable autographs and manuscripts and documents, and so forth, which are generally estimated to be worth about $500,000. There was a condition in the will that the collection had to be kept together and named the "John Boyd Thacher collection"; also that in case any provision of the will was not respected the books should revert to the estate.

There was an effort to set aside the will on the ground that its provisions had not been carried out. In the lower court the Government was sustained on the ground that the conditions of the will had been carried out. The case was appealed to the Court of Appeals of the District of Columbia and a decision has just been rendered upholding the position of the lower court and sustaining the position of the Government that the conditions of the will had been respected. Consequently the very valuable collection will be retained in the permanent possession and ownership of the Library of Congress.

The opinion of the court is a most valuable statement, and the country generally will be interested in reading it, I am sure. Rather than leave it to the limited files of the court records, I would like to have it printed in the RECORD so that readers of the RECORD may have the opportunity to read it. I ask unanimous consent that the opinion of the Court of Appeals of the District of Columbia may be printed in the RECORD.

There being no objection, the opinion was ordered to be printed in the RECORD, as follows:

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5728

GEORGE CURTIS TREADWELL AND HUGH REILLY, AS EXECUTORS OF THE WILL OF EMMA TREADWELL THACHER, AND LAURA BUTLER TREADWELL, EXECUTRIX OF THE WILL OF GEORGE CURTIS TREADWELL, DECEASED, APPELLANTS, *v.* HERBERT PUTNAM, APPELLEE

Appeal from the Supreme Court of the District of Columbia.

(Argued April 3 and 4, 1933. Decided May 15, 1933)

Richard H. Wilmer, Douglas L. Hatch, and Bethuel M. Webster, all of Washington, D.C., and C. Dickerman Williams, of New York City, for appellants.

Leo A. Rover, John W. Fihelly, and John J. Wilson, all of Washington, D.C., for appellee.

Before Martin, chief justice, and Robb, Van Orsdel, and Groner, associate justices.

Groner, associate justice: The parties occupy the same position here as below, and we shall speak of them as plaintiffs and defendant.

Mrs. Emma Treadwell Thacher, the widow of John Boyd Thacher, formerly lived in Albany, N.Y. She died February 18, 1927, leaving a last will dated in 1925, in which she bequeathed to the United States a valuable collection of books, autographs, manuscripts, and documents, then in the possession of the Library of Congress, where she had deposited it as a loan some 15 years prior to her death.

The fifth paragraph of her will is as follows:

"I give and bequeath to the United States of America all the books which formerly composed that part of the library of my late husband, John Boyd Thacher, which is now contained in the Library of Congress in the city of Washington in the District of Columbia; also, all autograph letters, manuscripts, and documents written or subscribed by the kings and queens or other rulers of England, Germany, Spain, and Italy, including the Popes of Rome, and the rulers of France, including the Napoleonic collection; also, all the books and pamphlets on, or relating to, the subject of the French Revolution and the special collection of autographs, autograph letters, and documents relating to that subject, all owned by my late husband, John Boyd Thacher, at the time of his death and thereafter acquired and now owned by me and which have not been otherwise disposed of by me at the time of my death or by any other provisions of this my last will and testament or any codicil or codicils thereto; upon condition, however, that said books, pamphlets, autographs, autograph letters, and documents shall be kept together and maintained as an entire collection to be always included with and as a part of the library formerly belonging to the said John Boyd Thacher now in the Library of Congress in the city of Washington in the District of Columbia, known and to be always known and designated as the 'Collection of John Boyd Thacher' and forever held by the United States of America under such name and designation in said Library of Congress in the custody of its Librarian; provided further, that said Librarian of Congress shall prepare and publish, in such form as shall be approved of by my executors, a catalog of said books, pamphlets, autographs, autograph letters, and documents, unless a satisfactory catalog of the same shall be so prepared and published by me during my lifetime; and provided further, that all possible precautions necessary for the preservation and safety of the same shall be applied and observed at all times by the proper officials and representatives of the Government of the United States of America."

In October 1930 this replevin suit was instituted in the court below to recover from the defendant, the Librarian of Congress, the collection of books and documents referred to in the above paragraph of the will. The declaration alleges that the collection was at the time of Mrs. Thacher's death and since in the possession of defendant; that defendant had been notified by the executors of the will of its terms; that he assented to the conditions of the legacy but had not fulfilled them; and that demand for return of the collection had been made and refused.

Paragraph 7 of the will specifically provides for a reversion of the legacy in the event the United States shall not faithfully and fully observe the terms and conditions prescribed by the will, or perform any of the requirements imposed for the care, preservation, and safety of the collection; and paragraph 14 of the will gives the residue of the estate to George Curtis Treadwell, the nephew of the testatrix and one of the executors of the will.

The case was tried to a jury, but at the conclusion of the evidence, on motion of both parties for a directed verdict, the court instructed the jury in favor of the defendant. Prior to this action, the court had made special findings of fact; among others, that the United States had observed all proper precautions, necessary for the preservation of the collection; that the executors had never consented, prior to the 6th day of September 1929, to the United States retaining as its own the articles bequeathed; that on that date demand for the return of the articles having been made by the executors and refused by the defendant, the complete title passed to the United States; that prior thereto the defendant neither understood nor believed, nor had reasonable cause to understand or believe, that complete title had passed to the United States. The court concluded from this that the duty with relation to the segregation and cataloging of the collection did not arise until September 1929. The court also found that the collection, consisting of five groups, was up to September 1929 in various parts of the Library building, but that at all times since Mrs. Thacher's death had been known and designated as the "John Boyd Thacher collection"; that since March 1930 it had all been kept together and maintained as an entire collection in the Thacher room; that the catalog published by the Library of the incunabula was a satisfactory compliance with the terms of the will in relation to that subject; and that the catalog of the other articles had been begun within a reasonable time and copies submitted to the executors, and the whole finally published in 1931.

We find in the record 170 assignments of error, and these we have examined patiently, but we do not need to refer to them each separately, if for no other reason, because counsel have condensed the argument so that it is really only necessary to decide whether there was evidence sufficient to raise an issue of fact for the jury as to compliance with the terms of the will, which, of course, involves deciding whether the court below was correct in taking the case from the jury and entering judgment for the defendant.

We have carefully read all of the evidence and have reached in the main the same conclusion reached by the lower court.

As we have already had occasion to say, the Thacher collection had been turned over by Mrs. Thacher to the Library of Congress many years prior to her death. She visited the Library on a number of occasions and inspected the arrangement of the different groups in the building. She therefore knew how the collection was arranged. Some 10 years before her death the Librarian caused to be prepared a catalogue of the incunabula, as to which she expressed her enthusiastic approval. In her will carrying out a purpose she had previously expressed, she gave the collection to the United States on the conditions mentioned in her will. The conditions were that the collection should be maintained as an entirety and be designated as the "Collection of John Boyd Thacher", and that the Librarian should prepare and publish with the approval of the executors a catalog of the books, pamphlets, autographs, and documents, unless such catalog had been previously prepared and published during her lifetime, and also that the safety of the collection should be preserved at all times in all proper ways.

In the early part of March 1927 counsel for the executors sent defendant a copy of Mrs. Thacher's will. To this letter defendant replied that the conditions of the bequest would be met. His attitude in this respect has never changed. The will was probated some 2 months later, in the early summer of 1927. Between these two dates there was some correspondence between counsel for executors and defendant, the purpose being to determine whether all the papers, autographs, etc., bequeathed in the will were then in the possession of the Library, and, particularly in the later correspondence, whether the Library had possession of articles not bequeathed under the will. In this exchange of communications counsel for the executors wrote to the defendant that if the Library already had in its possession all the things bequeathed, there

would then remain only the formal transfer to be made; and the defendant on his part, acknowledging on behalf of the United States possession of all the property bequeathed, agreed that nothing more remained to be done than the formal transfer. Obviously at this time both parties contemplated some method of transferring complete title, but the formality never was observed. In the meantime the property remained just as it had been for more than 15 years. About this time counsel for the executors requested the defendant to furnish a list of all the property in the hands of the Library for the purpose of assisting the executors in the preparation of an inventory and appraisal, stating that at a later time it would be necessary to obtain an expert evaluation of the property for the purposes of administration. In midsummer of 1927 the correspondence with relation to the appraisal continued and defendant was notified that the executors and their counsel contemplated a visit to Washington after the inventory and appraisal had been finished. Equally obviously the executors still considered as of this time some further duty on their part to make the bequest effective. The record discloses that though the inventory was finished and a tentative appraisal made, the promised visit of the executors was postponed until midsummer of 1929, when, to quote from the testimony of counsel for the executors, "the trouble started." The date was August 1929.

From this brief statement of the facts we think it is clear that up to the time the breach is alleged to have occurred nothing was done by the executors of Mrs. Thacher to vest complete and absolute title in the United States, and in this view the court below was quite correct in thinking the Librarian of Congress was justified in his belief that when the administration of the estate was sufficiently advanced the executors would deliver to the Government some sort of instrument formally relinquishing claim of the executors to the property. We are not able to find in the record a statement of the executors' accounts with the probate court in New York, and we are therefore not informed when the estate was settled, but it is perfectly clear that in the latter part of 1927 and near the beginning of 1928 they were in correspondence with the Librarian for the purpose of getting data to include in the report to enable them to close the administration. After that time they continued inactive, so far as the bequest here is concerned, until the visit in the summer of 1929 and the demand in September of that year.

All of the parties agree that under the law title to a specific legacy vests in the legatee upon the death of the testator. All agree likewise that the title which then vests is not complete, as the property is subject to contribution for the testator's debts; that it only becomes complete upon the assent by the executor; and that this assent may be express or implied. Undoubtedly this is the rule. When the property is in the possession of a legatee, acquiescence by the executors in continued possession is ordinarily sufficient to imply assent. Here we have a case in which it is not claimed there was an express assent and in which, as we have seen, there was in the early stages of the administration correspondence between the representative of the legatee on the one hand and the executors on the other—the one located in Washingon and the others in New York—looking to the appraisal of the property in the proper settlement of the estate.

These things tended to delay the formal transfer and equally to delay the operation of the rule of implied transfer. In these circumstances it would be going very far to say that the silence and inaction of the executors during all of this period were sufficient to authorize defendant to proceed to carry out at once the provisions of the will. And we think the record clearly contradicts the idea that the executors themselves so understood, for after the trouble began in the summer of 1929 there were three or four demands by the executors for the delivery of specific articles then in the possession of the Library. The Librarian complied with these demands to the extent of over 250 items. All of this merely tends to prove the uncertainty that surrounded the final carrying out of the terms of Mrs. Thacher's will. While by the terms of the will the United States is required to maintain the collection in the way designated by the testatrix, the will itself sets no specific time for the performance of these conditions, and in such circumstances the universal holding is that the law will imply a reasonable time. Appellant does not deny that this is true but insists that the reasonable time had expired at the time of the demand. This position, we think, should not be conceded.

The preparation of the catalog which the will provides should be made was completed in 1931. It took nearly 2 years in its preparation. The collection has been brought together as directed by the will and marked as directed by the will, and though most of this occurred subsequent to the demand in 1929, and though concededly some of the things required to be done might have been done within a shorter period, yet, in view of the circumstances, we think the Librarian was wholly justified in delaying final and complete compliance with the exact terms of the will until he was assured that no claims from any source would be asserted against the collection in his possession. In this view it is unnecessary, we think, to draw any dead line as to which to say that delivery and vesting of title was complete. Obviously such a time was not, as insisted by appellant, a few months after the probate of the will. If the question were necessary to a decision of the case, it would not be going too far to say that until after the expiration of a year from the probate of the will (the usual period for settlement), or until after the final settlement of the accounts of the executor in the court of administration, no implied assent on their part to the transfer could be said to arise. And if we should adopt one or the other of these dates as the period when the bequest definitely and finally vested, the time between either and actual compliance with the conditions was entirely reasonable. To reach a different conclusion would be unjustifiable and would have the effect to frustrate the obvious intention of the testatrix.

It is impossible to read the evidence and correspondence between Mrs. Thacher and the defendant and not be struck with evidences of her pride in the collection by her distinguished husband of these historical papers and equally of her desire to maintain in his honor the collection entire for the benefit of posterity. She could have chosen no better instrumentality for this than the great Library to which she committed the property, and it is unthinkable, if she had been alive, she would ever have complained, much less canceled her gift and abandoned her purpose because the designated arrangement of the collection in the Library was delayed. But, as we have already said, we are not even prepared to go to the extent of saying there was any delay, or, if there was, that it was the fault of defendant. On a fair consideration of his attitude and actions we see nothing to criticize, and certainly nothing to condemn. He was eager to have the collection of Mrs. Thacher preserved, and received the bequest with the purpose of discharging fully the terms on which she gave it. He has done so, and it would be wholly arbitrary to say that the time required for this, in the circumstances we have narrated, was unreasonable.

Having reached this conclusion, we find it unnecessary to discuss the question as to whether this is in fact a suit against the United States, or another question, discussed elaborately at the bar, whether, on the motion by each side for a directed verdict, defendant is not now foreclosed by the findings of fact of the lower court.

The judgment of the lower court is affirmed.

Affirmed.

## INTERNATIONAL PROBLEMS THAT FACE PRESIDENT ROOSEVELT—ADDRESS BY FREDERICK J. LIBBY

Mr. COSTIGAN. Mr. President, Mr. Frederick J. Libby, executive secretary of the National Council for Prevention of War, a consistent and effective friend of peace, delivered an address in Denver, Colo., March 13, 1933, on the subject of international problems. I ask leave to have that address printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

The world is the economic unit. This is the central fact of our times. It is a fact to which our national policies and those of other nations must be adjusted before any of us can prosper. It needs to become central in our thinking before we can justly call ourselves realists. It is a factor with which the new Chancellor of Germany will find eventually that he must reckon. It will prove in the long run to be of far greater importance to Japan than her present leaders have yet recognized. A blind economic and militaristic nationalism has been reeking its will on the world and the appalling consequences are felt in every household. Unemployment not only destroys material values; it attacks human values.

We have been defying economic law. A thousand economists warned the President and Congress that the Hawley-Smoot tariff bill was fundamentally wrong, but the bill was passed. Other nations followed our lead. Economic warfare has been raging throughout the world. It has been nearly as ruinous as military warfare. A reversal of policy is now generally recognized as necessary.

### THE ECONOMIC DEPENDENCE OF THE UNITED STATES

We must establish beyond peradventure of a doubt this central fact of the world's economic unity. The research department of the National Council for Prevention of War has prepared an economic survey of our dependence upon other countries, both by States and cities and by industries. I will quote from the study by industries, since it is the more dramatic of the two.

Our automobile industry is generally regarded among us as peculiarly American. Yet our automobile industry depends upon 18 countries for essential materials that go into the automobile. From Algeria and Spain comes cork; from Asia Minor, mohair; from Australia, molybdenum; from Bolivia and Borneo, tin; from Borneo and Brazil, rubber; from Brazil and Russia, manganese; from Canada, nickel, as well as arsenic, an ingredient of the glass; from China, more molybdenum, which is used in giving hardness to steel, and tungsten; from France, aluminum and talc; from India, shellac; from New Caledonia, chrome; from Peru, vanadium; and so on. Some of these imported materials could be obtained, though at a higher cost, in the United States, and some of the essential ones do not exist here. But the net result is that our automobile is in reality a world automobile, which our factories put together.

The same situation holds for practically all our important industries. Our clothing industry uses imported materials from 21 countries. Even the buttons come mostly from abroad. Our electrical industry depends upon 17 countries for its raw materials. Our furniture industry uses imported materials from 25 countries, our leather industry from 22, our hardware industry from 25, our drug and tobacco industries from 27, our stationery-supplies industry from 24. Our grocers sell imported foodstuffs from 21 countries or more. A simple little luncheon was set upon the table recently in Tacoma, Wash., the ingredients of which came from 24 countries. Our radio industry uses imported materials

from 18 countries and our telephone instrument contains material from 15 countries. There are those who have thought that building a spiritual tariff wall, if one may so term it, on top of our present material tariff walls with a "buy American" campaign would improve our condition. This campaign comes a century too late. If we were willing to give up our telephone, our radios, our electric lights, our automobiles, a large share of the contents of our tables and of our clothing, and go back to the simplicity of the log cabin and homespun days, we might be successful in "buying American." But we are not looking toward such a lowering of our standards of living. We want rather to improve them.

OUR EXPORT TRADE TELLS THE SAME STORY

Our economic nationalists have been inclined to tell us that a reduction of 10 percent in our production would make us self-contained. It is true that in dollars our exports have been approximately one tenth of our production, but they are unevenly distributed. Fifty percent of our cotton was exported in 1929 and it ranges around that figure every year. No one can expect the Southern States to reduce their cotton production 50 percent in an attempt to produce nationally only what we consume.

In the same year 41 percent of our tobacco was exported, 33 percent of our lard, 18 percent of our wheat, 36 percent of our copper, 35 percent of our kerosene, 31 percent of our lubricating oil.

The same is true of our machinery. Twenty-three percent of our agricultural machinery was exported that year; 29 percent of our printing machinery; 30 percent of our sewing machines; 41 percent of our typewriters; 50 percent of our motorcycles.

Even the machine with which "Buy British" is stamped upon the letters of our English friends in a similar campaign is made in America. "Buy American" is printed by the Hearst press largely on paper made from Canadian wood pulp. The world is the economic unit; and if we wish to maintain and improve our present standards of living, the world will be the economic unit increasingly as the years unroll. The frank acceptance of this central fact must be the background of the Roosevelt foreign policies, just because escape from our present economic conditions is the primary task that we have laid upon the new administration.

HOOVER'S "THREE ROADS" TO RECOVERY

President Hoover in his valedictory address in New York on February 13, in what seemed to me to be a generous and patriotic preparation for his successor, pointed the way to a policy of international cooperation with tariff reduction, which makes nonpartisan support of the Roosevelt program easy. Mr. Hoover said:

"Daily it becomes more certain that the next great constructive step in remedy of the illimitable human suffering from this depression lies in the international field. * * *

"The American people will soon be at the fork of three roads. The first is the highway of cooperation among nations, thereby to remove the obstructions to world consumption and rising prices. This road leads to real stability, to expanding standards of living, to a resumption of the march of progress by all peoples. It is today the immediate road to relief of agriculture and unemployment, not alone for us but the entire world.

"The second road is to rely upon our high degree of national self-containment, to increase our tariffs, to create quotas and discriminations, and to engage in definite methods of curtailment of production of agricultural and other products, and thus to secure a larger measure of economic isolation from world influences. It would be a long road of readjustments into unknown and uncertain fields. But it may be necessary if the first way out is closed to us. Some measures may be necessary pending cooperative conclusions with other nations.

"The third road is that we inflate our currency, consequently abandon the gold standard, and with our depreciated currency attempt to enter a world economic war, with the certainty that leads to complete destruction, both at home and abroad."

1. REDUCTION OF TARIFFS BY INTERNATIONAL AGREEMENT

Having built now our solid foundation, we are in position to rear the superstructure; and first comes reduction of tariffs by international agreement, removing the first of what President Hoover calls "the obstructions to world consumption." Every nation has surrounded itself with a tariff wall as if it were a unit. But the world is the unit. Tariff walls are competitive. We build; they build. There is no winning this race. I remember going once for $90 round trip from Portland, Maine, to California. Our railroads were engaged in a rate war. It profited none of them. No more has the economic war of the past few years profited any nation. Economic laws are as inexorable as God's moral laws are. You can't defy God in any field and win. Reduction of tariffs, first by negotiation with a nation at a time and later in a general economic conference, is in the very nature of things the first item on the Roosevelt program of permanent recovery.

2. STABILIZATION OF CURRENCIES

As a necessary accompaniment of reduction of tariffs comes stabilization of currencies. Fluctuating currencies are a deadly foe to international trade. More than 40 nations are off the gold standard. Stabilization of currencies is the second necessary item in an intelligent program for world recovery. President Roosevelt, to improve our economic condition, has the task not only of increasing the purchasing power of our own farmers but of increasing the purchasing power and therefore the prosperity of the entire world.

3. DEBT READJUSTMENT

It is my belief that Secretary Cordell Hull is right in believing that the war debts have been exaggerated among the obstructions to world trade. Senator BORAH said the same thing last summer in Minneapolis. He was probably correct in saying that the outright cancelation of the debts would hardly touch the world-wide depression if it were an isolated act.

But that reduction of the debts is an essential part of a general program of world recovery, no one can deny. The shells have been fired, the food has been eaten, for which the debts stand. Now they constitute a great mountain at one end of what is normally a two-way road. We don't want the goods that we should have to take, over and above our normal imports, to pay these debts.

President Roosevelt has indicated that he will use these debts in bargaining. Three nations have "nuisances" to trade. We have the debts; the British have their depreciated and controlled currency; the French, their armaments. President Roosevelt evidently intends that all three nuisances shall be abated together as a part of a general program of world recovery.

4. DISARMAMENT

There is no argument against the drastic reduction of the world's present armaments by international agreement. Four thousand million dollars a year is too much for the world to be spending on what it vainly calls "national defense." Armaments, like tariffs, are competitive. We build; they build. No one can win this race any more than one can win a race in tariffs. And it has always led to war.

President Hoover proposed in June a one-third cut in armaments with abolition of the weapons of attack. He named specifically for abolition bombing planes, poison gas, disease germs, tanks, heavy mobile artillery, and submarines.

Other proposals have been made to the Disarmament Conference. The latest is that of Prime Minister MacDonald, which deals with the reduction of the armies of Western Europe to a maximum figure of 200,000 men each, with an extra allowance of colonial troops.

President Roosevelt has recognized the crucial importance of success in the reduction of armaments by giving Mr. Norman H. Davis the rank of an ambassador and pledging him strong support in his efforts.

Success in reduction of armaments is economically of vital importance from two standpoints. In the first place, no nation, not even the United States, can afford to spend what is now being spent upon competitive armies and navies. The United States is leading the world in its outlays for national defense, outstripping its nearest rival, Great Britain, by more than $100,000,000 a year. We need this money now for constructive purposes.

Still more important economically is the instability that results from competitive armaments. Even Mussolini has recognized this, and, despite his provoking speeches, he has volunteered to join with Great Britain, France, and Germany in guaranteeing the peace of Europe for 10 years. He wants Italy to prosper and no one knows better than he does that only a stable Europe can recover from this depression.

There is another reason why success in the Disarmament Conference has become of great importance to all nations. This is the fact recently publicly recognized by the British Government, that an economic conference cannot succeed unless the Disarmament Conference succeeds. The powerful interests in whose behalf tariffs have been imposed will fight tariff reductions. Success at Geneva must precede success at London.

5. ADHERENCE TO THE WORLD COURT

Only a stable world can be a prosperous world. Only an organized world can be a stable world. If the use of war as a method of settling disputes is to be prevented, law must be established in its place. This has been the position taken by American statesmen and by all the American Presidents for 35 years. Ever since the American delegation worked at the first Hague conference for the setting up of a World Court similar to our Supreme Court. International disputes are bound to be frequent in our kind of world. Conflicts of interest are inevitable as far as one can see ahead into the dark. Our Supreme Court was set up, not after the disputes between our States had been settled but as a method of settling part of them—that part that is susceptible of judicial settlement.

All political parties in the last campaign endorsed America's adherence to the World Court. There is no important opposition to it in the country outside the Hearst press. Few Senators now oppose it. It is a step in international cooperation on which the country is thoroughly prepared to go forward.

President Roosevelt has already indicated, through Senator ROBINSON of Arkansas, that he includes adherence to the World Court in his program of world recovery to be adopted at this session. The stabilizing effect of our adding our full moral support now to this branch of the international-peace machinery will be obvious to anyone who reads the newspapers. It is reasonable to hope that this long-drawn-out fight is to be pushed by the President to an early conclusion. A successful vote under his leadership is assured.

6. RECOGNITION OF RUSSIA

Frequent rumors are coming from Washington to the effect that our Government will soon recognize Russia. This step is long overdue. As I said here a year ago, recognition of Russia involves no approval of communism. It makes possible, on the other hand,

our sitting down with Russia at the table and settling our very real differences.

Secretary Hughes in 1923 laid down three conditions for Russian recognition: That Russia pay her governmental debts to us; that Russia pay for confiscated American property; and that Russia agree to abstain from carrying on communistic propaganda in our country. Russia replied at once that she was prepared to negotiate with us on this basis, but that she had a little debt of her own to present. It was the bill for our illegal expedition to Archangel, where for more than a year we maintained an army without declaration of war, killing Russian citizens and destroying Russian property. You will remember that a year or so ago we brought home the American dead.

There are three reasons why we should recognize Russia now: First, we need Russia's trade. Russia's purchase of American goods has fallen off $100,000,000 between 1930 and 1932. Germany and Great Britain have got this trade. France and even Italy are trading with Russia officially.

More important than this, however, although this is not unimportant in our present economic condition, is the stabilizing influence that our recognition of Russia now would have upon conditions both in Europe and in the Orient. The reasoning that makes it important that we adhere to the World Court applies equally to our recognition of Russia. We need a stable world in which to recover economically; and for two great nations like Russia and the United States to be unable to speak to each other encourages chaos and not stability.

In the third place, we are committed by the Paris Pact to the principle of settling all our disputes at the table. Our issues with Russia can be settled by negotiation. They can never be settled by the methods which we have been pursuing.

It is strongly to be hoped, therefore, that the rumors that our policy toward Russia is to be reversed in the near future are justified.

7. AMENDMENT OF THE PHILIPPINE INDEPENDENCE BILL

The Filipinos hope to secure improvements in the Philippine independence bill which Congress passed in the last session over President Hoover's veto. Have you read the Philippine independence bill? If you have, I believe that you will agree with me that it can be amended with advantage in certain particulars. I will venture to suggest three.

In the first place, in preparing our ward to go into business for itself, we certainly want at least to be just and if possible generous in the financial arrangements. When you examined the tariff relations that are to subsist between the Philippines and the United States during the next 10 years or more, you were undoubtedly aware of the fact that the program is more favorable to us than to the Philippines. In other words, we have taken advantage of our power in a manner that, I believe, does not express the true spirit of the American people. Ought we not, rather, to make the tariff arrangements equitable and reciprocal, as we shall undoubtedly try to do with other nations in the approaching Economic Conference? This is my first suggestion.

In the second place, did you observe the inconsistency of reserving a naval and military base for ourselves after independence has been granted, with the provision for the neutralization of the islands under a guaranty from the Pacific powers? If the Philippines are to be neutralized, as I hope they will, then we can have no naval base there.

Moreover, our present naval base in the Philippines is, as every Navy man on the coast will tell you, quite inadequate for their protection from a power like Japan. In the Washington Treaty of 1922 we gave up further fortification of the Philippines or of Guam in the interest of peace and general reduction of naval armaments. Japan could capture the Philippines tomorrow if she wanted to and we could not prevent it. An inadequate naval base is more dangerous, both for the Philippines and for us, than none at all. Its capture by Japan would probably involve both the United States and the Philippines in another war for "national honor."

For these reasons, both because of its inconsistency with neutralization and because of its inherent danger, this provision for a naval base ought to be eliminated from the bill.

In the third place, we are allowing the Philippines an immigration quota of 50 a year during the period of tutelage and then are cutting them off entirely. Wouldn't it be better to continue permanently the quota of 50? We hope to retain the good will of the Philippines after letting them go and to continue our trade with them in the happiest of relations throughout all future time. Is it good business sense, not to stay friendly, to slap their faces when we bid them good-bye? In my judgment, it would be far better in every way if Japan and China, as well as the Philippines, were permitted their small immigration quotas of 186 and 100 a year, respectively, instead of suffering exclusion.

8. OUR POLICY TOWARD JAPAN'S ACTION IN MANCHURIA

It is generally understood that President Roosevelt will continue the policy which President Hoover inaugurated toward Japan's action in Manchuria, involving nonrecognition of any situation growing out of a violation of the Paris Pact and consultation with the other signatories of the pact when faced with the violation or the threat of its violation. In pursuance of this policy the President has appointed Hugh Wilson to sit with the Committee of Twenty-one, though without a vote, in the consultations as to possibilities of common action.

Secretary Stimson, in a prophetic speech which he made on August 8, 1932, before the Council on Foreign Relations in New York City, spoke of the "revolutionary" change in human thought that has taken place toward the war system as evidenced by the Covenant of the League of Nations and the Paris Pact, and then continued:

"War between nations was renounced by the signatories of the Briand-Kellogg Treaty. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict either one or both of them must be wrongdoers, violators of this general treaty law. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead we denounce them as lawbreakers."

Secretary Stimson, later in the same speech, dated the turning point in the world's history as October 1929, when President Hoover and Ramsay MacDonald declared in a joint statement that the United States and Great Britain will direct their national policies in accordance with the Paris Pact. This passage in Secretary Stimson's speech reads as follows:

"In October 1929 President Hoover joined with Mr. Ramsay MacDonald, the Prime Minister of Great Britain, in a joint statement at the Rapidan, in which they declared:

"'* * * Both our Governments resolve to accept the peace pact, not only as a declaration of good intentions but as a positive obligation to direct national policy in accordance with its pledge.'

"That declaration marked an epoch."

There is no doubt that the decision of the two most powerful countries to live by the Paris Pact is of outstanding importance to the future history of the world. But a more dramatic expression of the revolution that has taken place in the world's thinking about war occurred on February 24 at Geneva. Your children's children's children will study in their history textbooks the story of that day.

After full preparation, after sending an impartial commission to Manchuria, Japan, and China to report authoritatively on the facts and to make recommendations, a report that was received throughout the world, except in Japan and China, as both just and wise; after a Committee of Nineteen had built a report on that report, in which Japan was found guilty of this "illegal thing", going to war, and thus violating her international obligations, a report which was broadcast from the League of Nations radio station to all peoples; then that great town meeting of the world, the Assembly of the League of Nations, met to take action.

More than 40 nations were present. Japan was there, on trial among her peers. A roll call was demanded. The vote, mind you, was on the adoption of this report of the Committee of Nineteen, finding Japan guilty of this "illegal thing", going to war. The votes came, strong and without hesitation: "Aye", "aye", "oui", "oui", "aye." Forty nations voted "yes." Siam, for her own reasons, abstained from voting. Japan voted "no", but her vote was not counted because she was a party to the dispute. Then, found guilty by her peers, guilty of going to war and, therefore, of violating her international obligations, and unwilling to accept the good offices of her colleagues for the peaceful settlement of her disputes with China, Japan walked out alone into the dark.

Her guns have gone on thundering in Jehol, but they have a hollow sound. For Japan, even more than for us, the world is the economic unit. She can win against China on the military front, but she can never win against the world on the economic front. It is not a time for the use of drastic measures against Japan. As Walter Lippmann said in his illuminating column next day, the world can afford to wait better than Japan can. She will need the help of these nations whose good offices she has spurned. She will learn, as the French learned in the Ruhr district and as we learned in Nicaragua, that trade is not advanced by the bayonet. China's good will is essential to Japan's economic recovery. Militarists are driving Japan toward economic ruin. By and by wiser leaders are going to restore her to the only sane path for any nation today—the highway of international cooperation.

President Roosevelt was wise in not making our foreign policies a subject of campaign controversy. He thus left himself free to follow, as he is following, the course laid down by the previous administration of maintaining the sanctity of international obligations as the only possible basis of continuing peace.

SUMMARY

Summing up, the old order was based on the preposition "against." We built tariff walls "against" the rest. We armed "against" the rest. We sought our prosperity at the expense of the rest. We sought national security "against" that of the rest. The consequences of our folly are all about us.

The slogan of the new order is the preposition "with." We must work "with" the rest to lower our tariff walls and to reduce by agreement our intolerable and menacing armaments, to achieve a joint prosperity and joint security.

Not by warfare, military or economic, but only by cooperation can we build a nobler, happier, richer civilization.

SALARY SCHEDULES OF BANKS, RAILROADS, PUBLIC UTILITIES, ETC.

Mr. COSTIGAN. Mr. President, I ask unanimous consent for the immediate consideration of a resolution which is lying on the table, being Senate Resolution 75, as modified.

The VICE PRESIDENT. The Senator from Colorado asks unanimous consent for the consideration of a resolution, which the clerk will read for the information of the Senate.

The Chief Clerk read the resolution (S.Res. 75) submitted by Mr. COSTIGAN on the 8th instant, as modified, as follows:

*Resolved*, That the Federal Reserve Board is requested to prepare and transmit to the Senate as soon as practicable a report showing the salary schedule of the executive officers and directors of each Federal Reserve bank and member bank of the Federal Reserve System; be it further

*Resolved*, That the Reconstruction Finance Corporation is requested to prepare and transmit to the Senate as soon as practicable a report showing the salary schedule of the executive officers and directors of each bank not a member of the Federal Reserve System to which loans or advances have been made by the Corporation; be it further

*Resolved*, That the Federal Power Commission is requested to prepare and transmit to the Senate as soon as practicable a report showing the salary schedule of the executive officers and directors of each public-utility corporation engaged in the transportation of electrical energy in interstate commerce and of all other corporations licensed under the Federal Water Power Act; and be it further

*Resolved*, That the Federal Trade Commission is requested to prepare and transmit to the Senate as soon as practicable a report showing the salary schedule of the executive officers and directors of each corporation engaged in interstate commerce (other than public-utility corporations) having capital and/or assets of more than a million dollars in value, whose securities are listed on the New York Stock Exchange or the New York Curb Exchange.

For the purposes of this resolution the term "salary" includes any compensation, fee, bonus, commission, or other payment, direct or indirect, in money or otherwise, for personal services.

The VICE PRESIDENT. Is there objection to the present consideration of the resolution?

Mr. McNARY. Mr. President, a number of Senators have left the Chamber upon the theory that no further business would be transacted today other than executive business. Very few, I think, have had an opportunity to read the resolution. I do not know whether there would be any opposition to it; but, in view of the situation which I have just suggested, I shall have to object to its present consideration.

Mr. COSTIGAN. Mr. President, may I ask that the resolution, in its modified form, be printed in the RECORD?

The VICE PRESIDENT. The resolution has been read as modified and will appear in the RECORD. Objection is made to its present consideration.

WORLD POLITICAL AND ECONOMIC PEACE (H.DOC. NO. 36)

The VICE PRESIDENT laid before the Senate a message from the President of the United States, which was read, and, with the accompanying paper, referred to the Committee on Foreign Relations and ordered to be printed, as follows:

*To the Congress:*

For the information of the Congress I am sending herewith a message that I have addressed this morning to the sovereigns and presidents of those nations participating in the Disarmament Conference and the World Monetary and Economic Conference.

I was impelled to this action because it has become increasingly evident that the assurance of world political and economic peace and stability is threatened by selfish and short-sighted policies, actions, and threats of actions.

The sincere wish for this assurance by an overwhelming majority of the nations faces the danger of recalcitrant obstruction by a very small minority, just as in the domestic field the good purposes of a majority in business, labor, or in other cooperative efforts are often frustrated by a selfish few.

The deep-rooted desire of Americans for better living conditions and for the avoidance of war is shared by mass humanity in every country. As a means to this end I have, in the message to the various nations, stressed the practical necessity of reducing armaments. It is high time for us and for every other nation to understand the simple fact that the invasion of any nation or the destruction of a national sovereignty can be prevented only by the complete elimination of the weapons that make such a course possible today.

Such an elimination will make the little nation relatively more secure against the great nation.

Furthermore, permanent defenses are a nonrecurring charge against governmental budgets, while large armies continually rearmed with improved offensive weapons constitute a recurring charge. This more than any other factor today is responsible for governmental deficits and threatened bankruptcy.

The way to disarm is to disarm. The way to prevent invasion is to make it impossible.

I have asked for an agreement among nations on four practical and simultaneous steps:

First. That through a series of steps the weapons of offensive warfare be eliminated.

Second. That the first definite step be taken now.

Third. That while these steps are being taken no nation shall increase existing armaments over and above the limitations of treaty obligations.

Fourth. That subject to existing treaty rights no nation during the disarmament period shall send any armed force of whatsoever nature across its own borders.

Our people realize that weapons of offense are needed only if other nations have them, and they will freely give them up if all the nations of the world will do likewise.

In the domestic field the Congress has labored in sympathetic understanding with me for the improvement of social conditions, for the preservation of individual human rights, and for the furtherance of social justice.

In the message to the nations which I herewith transmit, I have named the same objectives. It is in order to assure these great human values that we seek peace by ridding the world of the weapons of aggression and attack.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *May 16, 1933.*

---

MAY 16, 1933.

The following message was cabled today to the sovereigns and presidents of the nations listed below:

His Majesty Zog I, King of the Albanians, Tirana, Albania.

His Excellency Agustin P. Justo, President of the Argentine Nation, Buenos Aires, Argentina.

His Excellency Wilhelm Miklas, President of the Confederation of Austria, Vienna, Austria.

His Majesty Albert, King of the Belgians, Brussels, Belgium.

His Excellency Getulio Vargas, President of the United States of Brazil, Rio de Janeiro, Brazil.

His Excellency Enrique Olaya Herrera, President of the Republic of Colombia, Bogota, Colombia.

His Excellency Daniel Salamanca, President of Bolivia, La Paz, Bolivia.

His Majesty Boris III, King of the Bulgarians, Sofia, Bulgaria.

His Excellency Arturo Alessandri, President of the Republic of Chile, Santiago, Chile.

His Excellency Ricardo Jimenez, President of Costa Rica, San Jose, Costa Rica.

His Excellency Lin Sen, President of the National Government of the Republic of China, Nanking, China.

His Excellency Gerardo Machado, President of the Republic of Cuba, Habana, Cuba.

His Excellency Thomas G. Masaryk, President of Czechoslovakia, Praha, Czechoslovakia.

His Majesty Christian X, King of Denmark, Copenhagen, Denmark.

His Excellency Rafael Leonidas Trujillo, President of the Dominican Republic, Santo Domingo, Dominican Republic.

His Excellency Juan de Dios Martinez Mira, President of the Republica of Ecuador, Quito, Ecuador.

His Majesty Fouad I, King of Egypt, Cairo, Egypt.

His Excellency Konstantin Pats, Head of State, Tallinn, Estonia.

His Imperial Majesty Haile Selassie I, Emperor of Ethiopia, Addis Ababa, Ethiopia.

His Excellency Pehr Evind Svinhufvud, President of Finland, Helsingfors, Finland.

His Excellency M. Albert Lebrun, President of the French Republic, Paris, France.

His Excellency Field Marshal Paul von Beneckendorff und von Hindenburg, President of the Reich, Berlin, Germany.

His Majesty George V, King of Great Britain, Ireland, and the British Dominions Beyond the Seas, Emperor of India, etc., London, England.

His Excellency Alexander Zaimis, President of the Hellenic Republic, Athens, Greece.

His Excellency Jorge Ubico, President of the Republic of Guatemala, Guatemala, Guatemala.

His Excellency Stenio Vincent, President of Haiti, Port-au-Prince, Haiti.

His Serene Highness Admiral Nicholas De Horthy, Regent of the Kingdom of Hungary, Budapest, Hungary.

His Excellency Tiburcio Carias A., Constitutional President of the Republic of Honduras, Tegucigalpa, Honduras.

His Majesty Faisal I, King of Iraq, Baghdad, Iraq.

His Majesty Victor Emanuel III, King of Italy, Rome, Italy.

His Majesty Hirohito, Emperor of Japan, Tokyo, Japan.

His Excellency Alberts Kviesis, President of the Republic of Latvia, Riga, Latvia.

His Excellency Antanas Smetona, President of the Republic of Lithuania, Kaunas, Lithuania.

Her Royal Highness Charlotte, Grand Duchess of Luxembourg, Luxembourg, G.D.

His Excellency General Abelardo L. Rodriguez, President of the United Mexican States, Mexico City, Mexico.

Her Majesty Wilhelmina, Queen of the Netherlands, The Hague, Netherlands.

His Excellency Juan B. Sacasa, President of the Republic of Nicaragua, Managua, Nicaragua.

His Majesty Haakon VII, King of Norway, Oslo, Norway.

His Exellency Harmodio Arias, President of Panama, Panama, Panama.

His Excellency Eusebio Ayala, President of the Republic of Paraguay, Asuncion, Paraguay.

His Imperial Majesty Reza Shah Pahlevi, Shah of Persia, Teheran, Persia.

His Excellency Ignace Moscicki, President of the Republic of Poland, Warsaw, Poland.

His Excellency General Oscar Benavides, President of Peru, Lima, Peru.

His Excellency General Antonio Oscar de Fragoso Carmona, President of the Republic of Portugal, Lisbon, Portugal.

His Majesty Carol II, King of Rumania, Bucharest, Rumania.

President Michail Kalinin, All Union Central Executive Committee, Moscow, Russia.

His Majesty Prajadhipok, King of Siam, Bangkok, Siam.

His Excellency Alcala Zamora, President of the Spanish Republic, Madrid, Spain.

His Majesty Gustaf V, King of Sweden, Stockholm, Sweden.

His Excellency Edmond Schulthess, President of the Swiss Confederation, Berne, Switzerland.

His Excellency Gazi Mustafa Kemal, President of the Turkish Republic, Ankara, Turkey.

His Excellency Gabriel Terra, President of the Republic of Uruguay, Montevideo, Uruguay.

His Excellency Juan V. Gomez, President of the United States of Venezuela, Caracas, Venezuela.

His Majesty Alexander I, King of Yugoslavia, Belgrade, Yugoslavia.

THE MESSAGE

A profound hope of the people of my country impels me, as the head of their Government, to address you and, through you, the people of your nation. This hope is that peace may be assured through practical measures of disarmament and that all of us may carry to victory our common struggle against economic chaos.

To these ends the nations have called two great world conferences. The happiness, the prosperity, and the very lives of the men, women, and children who inhabit the whole world are bound up in the decisions which their governments will make in the near future. The improvement of social conditions, the preservation of individual human rights, and the furtherance of social justice are dependent upon these decisions.

The World Economic Conference will meet soon and must come to its conclusions quickly. The world cannot await deliberations long drawn out. The conference must establish order in place of the present chaos by a stabilization of currencies, by freeing the flow of world trade, and by international action to raise price levels. It must, in short, supplement individual domestic programs for economic recovery, by wise and considered international action.

The Disarmament Conference has labored for more than a year and, as yet, has been unable to reach satisfactory conclusions. Confused purposes still clash dangerously. Our duty lies in the direction of bringing practical results through concerted action based upon the greatest good to the greatest number. Before the imperative call of this great duty, petty obstacles must be swept away and petty aims forgotten. A selfish victory is always destined to be an ultimate defeat. The furtherance of durable peace for our generation in every part of the world is the only goal worthy of our best efforts.

If we ask what are the reasons for armaments, which, in spite of the lessons and tragedies of the World War, are today a greater burden on the peoples of the earth than ever before, it becomes clear that they are twofold: First, the desire, disclosed or hidden, on the part of governments to enlarge their territories at the expene of a sister nation. I believe that only a small minority of governments or of peoples harbor such a purpose. Second, the fear of nations that they will be invaded. I believe that the overwhelming majority of peoples feel obliged to retain excessive armaments because they fear some act of aggression against them and not because they themselves seek to be aggressors.

There is justification for this fear. Modern weapons of offense are vastly stronger than modern weapons of defense. Frontier forts, trenches, wire entanglements, coast defenses—in a word, fixed fortifications—are no longer impregnable to the attack of war planes, heavy mobile artillery, land battleships called " tanks ", and poison gas.

If all nations will agree wholly to eliminate from possession and use the weapons which make possible a successful attack, defenses automatically will become impregnable and the frontiers and independence of every nation will become secure.

The ultimate objective of the Disarmament Conference must be the complete elimination of all offensive weapons. The immediate objective is a substantial reduction of some of these weapons and the elimination of many others.

This Government believes that the program for immediate reduction of aggressive weapons, now under discussion at Geneva, is but a first step toward our ultimate goal. We do not believe that the proposed immediate steps go far enough. Nevertheless, this Government welcomes the measures now proposed and will exert its influence toward the attainment of further successive steps of disarmament.

Stated in the clearest way, there are three steps to be agreed upon in the present discussions:

First. To take, at once, the first definite step toward this objective, as broadly outlined in the MacDonald plan.

Second. To agree upon time and procedure for taking the following steps.

Third. To agree that while the first and the following steps are being taken no nation shall increase its existing armaments over and above the limitations of treaty obligations.

But the peace of the world must be assured during the whole period of disarmament, and I, therefore, propose a fourth step concurrent with and wholly dependent on the faithful fulfillment of these three proposals and subject to existing treaty rights:

That all the nations of the world should enter into a solemn and definite pact of nonaggression. That they should solemnly reaffirm the obligations they have assumed to limit and reduce their armaments and, provided these obligations are faithfully executed by all signatory powers, individually

agree that they will send no armed force of whatsoever nature across their frontiers.

Common sense points out that if any strong nation refuses to join with genuine sincerity in these concerted efforts for political and economic peace—the one at Geneva and the other at London—progress can be obstructed and ultimately blocked. In such event the civilized world, seeking both forms of peace, will know where the responsibility for failure lies. I urge that no nation assume such a responsibility, and that all the nations joined in these great conferences translate their professed policies into action. This is the way to political and economic peace.

I trust that your Government will join in the fulfillment of these hopes.

FRANKLIN D. ROOSEVELT.

TAX-FREE CITIES, ETC.—ARTICLE BY LOUIS BARTLETT

Mr. DILL. Mr. President, I ask unanimous consent to have printed in the RECORD an article by Louis Bartlett, appearing in the Nation of May 17, 1933, entitled "Tax-Free Cities—Public Profits from Municipal Power."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Nation, May 17, 1933]

TAX-FREE CITIES—PUBLIC PROFITS FROM MUNICIPAL POWER

By Louis Bartlett

Eighty-four cities in the United States levy no taxes, yet perform all the functions of ordinary cities, and keep out of debt. There is nothing extraordinary in their location or natural advantages; they pay operating expenses, as many efficient factories do, from their by-products, and they keep expenses down by cutting out waste. These cities range in population from a few hundred to over 20,000, and are located in 16 States. Oklahoma has 55; Kansas, 7; Indiana, 3; Michigan, Iowa, Minnesota, Wisconsin, and Nebraska, 2 each; and Georgia, Texas, Vermont, Idaho, Washington, New York, New Jersey, and Wyoming, 1 each. It sounds too good to be true, but the fact is stubborn; these cities levy no taxes, yet they are efficiently run and furnish the services—police and fire protection, streets, sewers, and schools—that well-managed modern towns need.

How is this possible, when most American cities are reducing salaries, cutting down improvements, neglecting upkeep, and at the same time struggling under a load of taxes in many cases too heavy to bear, as the delinquency lists show? The answer is simple. These cities use the profits from the sale of municipal water, gas, and electricity, which would otherwise go to private companies, to carry on police, educational, and other nonrevenue-producing services. In reality what citizens pay for public-utility services is a tax; but we are not used to calling it that, because it is not paid at the city hall twice a year, but is turned over monthly to private companies which make a profit out of the transaction. More people pay for water, gas, and electricity than for the support of city, county, State, and National Governments; and they pay far more for these services than they pay in taxes to any governmental unit. To illustrate: In California the cost of the State government for the current year is $126,000,000; gas and electric bills alone amount to $188,000,000, or nearly 50 percent more. City governments in California cost $145,000,000 and county governments $123,000,000. If the cost of water, telephone, and transportation were added to the $188,000,000, the disproportion would be much greater. No study of taxation, therefore, is complete if it omits consideration of what is paid for essential services which are furnished by a duly licensed monopoly, in other words, by a public-utility company. Necessary services, such as the supplying of bread under a competitive system, are, of course, in a different category.

Do we pay a fair price for our gas and electricity? Are the private utility companies honest and efficient? Ask the stockholder in the Insull holding companies. He knows. So do the stockholders of most utility companies. Their stocks are being put through the wringer, and they are realizing that, with the water squeezed out, little remains. The first issuance of these so-called "securities" was a fraud on the public. But tons of paper and ink are still used to tell the world that the private companies which admittedly were dishonest in their stock dealings are honest and efficient in the management of their properties; that consumers receive from them good service at a fair price.

But the fact that cities owning their own systems get equally good service at lower rates will not down. Sometime ago Senator NORRIS introduced a graph into the CONGRESSIONAL RECORD showing that the average rate for domestic electric service in 24 American cities over a period of 16 years was 7.4 cents per kilowatt-hour, while during the same period in Ontario, Canada, the average for 21 cities was 1.6 cents per kilowatt-hour. Since this study was made, prices under both public and private ownership have been reduced, but in about the same ratio.

Ambassador Frederick Sackett told the World Power Conference in Germany 2 years ago that there was something wrong with an industry that sold its product for 15 times its original cost. Two thousand cities which own and distribute their own electric power have discovered what is wrong—the companies make excessive profits which they hide from the public in a maze of holding companies, fictitious capitalization, and juggled bookkeeping that would make the Cretan labyrinth look like a 4-track highway. And in order to keep people deluded, they employ all the arts of the propagandist and keep in pleasant personal touch with the leaders in every community—at the ratepayers' expense.

An interesting disclosure of how it is done came out recently in a rate hearing before the California Railroad Commission, when the San Joaquin Light & Power Co. was forced to give in detail all the items charged to its "operating expenses." It paid the following club dues and expenses for its employees: 22 in the Commercial Club, 5 in the Exchange Club, 4 in the Rotary Club, 1 in the Round Table, 5 in the Lions Club, 3 in the Bakersfield Club (outside of the territory it serves), 1 in the Optimists Club, 4 in the Engineers Club, 3 in the University-Sequoia Club, 1 in the Business Men's Club, 1 in the Petroleum Club, 1 in the Kiwanis Club, 4 in the Fresno City Farm Center, 7 in the Ad Club, 1 in the American Legion, 1 in the Dairymen's Club, 1 in the Press Club. And besides being a member of many of these clubs, the president of the company which operates in the vicinity of Fresno, 200 miles from San Francisco, had the ratepayers pay his club dues in the California Club, Commercial Club, Family Club, and Bohemian Club of San Francisco, as well as in other clubs lumped together under the title "miscellaneous." One wonders when he found the time to earn his salary of $22,900 a year.

No one is louder in the cause of good government than these club members; in fact, that is why they are members. They must be leaders in their respective communities and see that the towns are run "right." There must be no extravagance in city government; salaries must be kept down to the minimum. Especially in times of depression the pruning shears must be used freely to keep taxes down. They form "economy leagues", "taxpayers' associations", and similar organizations with patriotic titles, and enroll many good citizens who innocently think they are working for the community. Let us look closely at one of these organizations.

California, like other States, must pull in its belt. Since 1931 its government has been operating with the abandon of a flush mining camp and piling up a deficit. There is a legitimate place for organizations to study the cost of government and stimulate the legislature to reduce taxes. It is no wonder that the State Chamber of Commerce and the California Taxpayers Association assumed leadership in this direction. When the legislature met, the senate appointed a "fact-finding" committee on the cost of government which in 3 weeks made a survey of every department of the State government and of many county and city activities, and presented 400 bills to the legislature. It seemed a superhuman task for a small group, but it developed that they had been "assisted" by the California Taxpayers Association. According to the survey, salaries were to be cut to the bone, consolidations and eliminations were to be made, schools were to be curtailed. Among other things, the aggregate salaries of the seven supreme court justices were to be cut from $77,000 to $56,000, or from an average of $11,000 to $8,000 every year.

But who runs the California Taxpayers Association? Among its directors are the heads of the most important public-utility companies of the State. They want governmental taxes reduced. But what about the taxes they themselves collect in gas, electric, telephone, telegraph, and railway rates? Is this clamor for tax reduction a means of diverting attention from their own extravagance? One hesitates to say, but the list of salaries of over $5,000 a year recently reported to the California Legislature by the railroad commission is interesting, to say the least. A. F. Hockenbeamer, president of the Pacific Gas & Electric Co., the largest electric utility in the State, receives $75,000 a year, or enough to pay the seven salaries of the supreme court, at the figure his "California Taxpayers Association" thinks just, for a period of 1 year and 4 months; Paul Shoup, president of the Southern Pacific Railway Co., listed at $100,000, reported by the press to have been kicked upstairs at a salary of $125,000, gets enough to support the entire supreme court for 2 years.

Other presidential salaries reported are: Pacific Telephone & Telegraph Co., $60,000; Southern California Gas Co., $50,000; Western Pacific Railroad, $43,500; Southern California Edison Co., $68,500. The total of salaries of over $11,500 paid by the last-named company would pay the reduced salaries of the seven supreme court justices for 7 years.

The presidents of these companies are generous to others as well. The Pacific Gas & Electric Co. pays 1 salary of $40,000; 7 of $21,600, 2 of $18,000, 7 more over $11,000—in all, 94 salaries over $5,000. The Southern California Edison Co. reports 1 of $45,500, 1 of $33,500, 1 of $27,500, 3 more over $15,500, 13 more over $11,500—in all, 82 over $5,000. The Southern Pacific Co., in addition to 1 salary of $125,000, pays 1 of $36,000, 1 of $35,000, 2 of $30,000, 2 of $25,000, 2 of $24,000, 1 of $20,000, 2 of $18,000, 3 of $15,000—in all, 160 over $5,000.

Even small electric utilities are solicitous for the welfare of their presidents. The Vallejo Electric Light & Power Co., generating no power and serving a small community, pays $15,000 a year to its president, not far from a dollar apiece from every man, woman, and child in the town.

These fine salaries should enable the companies to get the very best brains in the community, which should be reflected in good service and lower rates to the consumers. Service, in general, is good, but rates are another story. Exact comparison of rates is

difficult to make, because each company has a policy all its own, usually making up its rates by adding to a minimum charge a price per kilowatt-hour which varies according to the quantity used. Such comparisons are not available in all the States, but I recently made such a study for the Commonwealth Club of San Francisco, published in its Transactions for June 1932. It may be said that the private companies' rates in California are lower on the average than those of companies operating elsewhere in the United States, though more than twice as high as the rates in Ontario, Canada, under public ownership. Twenty-one California cities own their own distributing systems, most of them buying power wholesale from the private companies. A comparison of domestic rates in these cities for lighting, heating, and cooking with those of the Pacific Gas & Electric Co. shows that three small towns in the group charge slightly higher rates and that all the others charge less.

For instance, for $1 a month the Pacific Gas & Electric Co. gives 13 kilowatt-hours; Los Angeles, Glendale, and Burbank give 21. For $2 the Pacific Gas & Electric sells 37 kilowatt-hours; Palo Alto sells 46, Pasadena 47, Los Angeles 48, and Healdsburg 60; Ottawa, Ontario, sells 128; and Tacoma, Wash., 130. Much the same ratios are found in the amounts of current for domestic use that can be bought for $3, $5, or more per month, and apply also for energy for commercial lighting and industrial use. Los Angeles attributes a large part of its industrial growth to its cheap municipal power rates, which had to be met by private competitors.

These cheaper power rates would hardly justify the cities, however, if they caused a deficit which had to be met from taxes. That side of the picture should be examined also. Do the cities subsidize their electric plants? The report I have cited contains exact data on this subject. It was found that after paying all operating expenses, depreciation on the investment, interest on debt, and so on—all of the items except taxes that the private companies pay—the cities made the following net profits per annum: Pasadena 47 percent, Redding 46 percent, Anaheim 46 percent, Glendale 45 percent, Lodi 38 percent, Healdsburg 37 percent, Alameda 35 percent, Riverside 35 percent, Palo Alto 34 percent, Roseville 32 percent, Santa Clara 28 percent, Los Angeles 28 percent. Moreover, the least net profit was 19 percent, in Burbank, where the city has not a monopoly and must compete with the Southern California Edison Co. In California electric-utility taxes average about 10½ percent of gross receipts. After that item is deducted (for bookkeeping purposes) the cities, operating with low-paid management, make from 8½ percent net to 35½ percent net profit every year, the average being well over 20 percent.

This theoretical tax allowance of 10½ percent has no real significance, however, as all the net profit of the municipal plants is used for city purposes. None goes out as dividends. What the private companies pay is an involuntary contribution to the cost of government, which we call a tax; the profits on operation made by the cities are all voluntary contributions for the same ends, and remove the necessity for a tax to raise the amount of this contribution. These are the sums that make "tax-free cities." In California there are none such, for the cities have adopted the policy of reducing rates and thus giving a wider usefulness to electric energy, but as we have seen, even at the lower rates great profits are made. Some statistics gathered just before the crash by Bird and Ryan in their book, Public Ownership on Trial, show that the net profits of the public electric plants aggregate over 30 percent of the amount raised by taxation in the same cities. The results of later years show substantially the same percentage. The net profits of the public plants have suffered less from the depression than almost any private business, and their net profits are approximately the same as 3 or 4 years ago. Those cities which also distribute gas make a comparable showing, so that if we add to the profits made from the sale of electricity those to be made by selling gas and water and giving telephone service at fair rates, the mystery of the tax-free city is solved.

### EXECUTIVE SESSION

Mr. ROBINSON of Arkansas. Mr. President, I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

### REPORTS OF COMMITTEES

The VICE PRESIDENT. Reports of committees are in order.

Mr. DILL. From the Committee on the Judiciary I report back favorably for the second time the name of Charles Wyzanski, Jr., of Massachusetts, to be Solicitor of Labor.

Mr. KING. Mr. President, the Senator is not going to ask for the confirmation of Mr. Wyzanski at this time?

Mr. DILL. No; I made no request in connection with the report.

Mr. DILL, from the same committee, also reported back favorably the nomination of George E. Hoffman, of Florida, to be United States attorney for the northern district of Florida.

Mr. KENDRICK, from the Committee on Public Lands and Surveys, reported back favorably the nomination of Fred W. Johnson, of Wyoming, to be Commissioner of the General Land Office.

The VICE PRESIDENT. The nominations will be placed on the calendar.

Are there further reports of committees? If not, the calendar is in order.

### THE CALENDAR—THE NAVY

Mr. ROBINSON of Arkansas. Mr. President, pending further consideration of the Acheson case, I ask unanimous consent that the routine nominations in the Navy on the calendar may be confirmed en bloc.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the nominations are confirmed en bloc.

### UNDER SECRETARY OF THE TREASURY

The Chief Clerk read the nomination of Dean G. Acheson, of Maryland, to be Under Secretary of the Treasury.

Mr. COUZENS obtained the floor.

Mr. VANDENBERG. Mr. President, will my colleague yield to me?

Mr. COUZENS. I yield.

Mr. VANDENBERG. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Adams | Copeland | Kendrick | Reynolds |
| Ashurst | Costigan | Keyes | Robinson, Ark. |
| Austin | Couzens | King | Robinson, Ind. |
| Bachman | Cutting | La Follette | Russell |
| Bailey | Dickinson | Lewis | Schall |
| Bankhead | Dieterich | Logan | Sheppard |
| Barbour | Dill | Lonergan | Shipstead |
| Barkley | Duffy | Long | Smith |
| Black | Erickson | McAdoo | Steiwer |
| Bone | Fess | McCarran | Stephens |
| Borah | Fletcher | McGill | Thomas, Okla. |
| Bratton | Frazier | McKellar | Thomas, Utah |
| Brown | George | McNary | Townsend |
| Bulkley | Glass | Metcalf | Trammell |
| Bulow | Goldsborough | Murphy | Tydings |
| Byrd | Gore | Neely | Vandenberg |
| Byrnes | Hale | Norris | Van Nuys |
| Capper | Harrison | Nye | Wagner |
| Caraway | Hastings | Overton | Walcott |
| Carey | Hatfield | Patterson | Walsh |
| Clark | Hayden | Pittman | Wheeler |
| Connally | Hebert | Pope | White |
| Coolidge | Johnson | Reed | |

The PRESIDING OFFICER (Mr. SMITH in the chair). Ninety-one Senators having answered to their names, a quorum is present.

Mr. COUZENS. Mr. President, I dislike very much to have to repeat. I dislike to have to listen to Senators who say the same thing over and over again. On last Friday evening, however, through the insistence of the senior Senator from Mississippi [Mr. HARRISON], we were required to proceed with the consideration of the nomination of Mr. Dean G. Acheson for Under Secretary of the Treasury. After reviewing the matter for nearly three quarters of an hour, we found that we had only 24 Senators present, and obviously we could not conclude the nomination that evening. Therefore it is apparent that, in all probability, not more than 20 or 25 Senators have read or heard the testimony with respect to the confirmation of Mr. Acheson. The testimony was taken by the Committee on Finance.

I do not intend to repeat all of the arguments I used last Friday evening against the confirmation of Mr. Acheson, but I do desire to draw to the attention of the Senate the testimony that was taken before the Finance Committee. I understand that the testimony has not been printed, and therefore it is not available, except as it appears in the RECORD.

When Mr. Acheson appeared before the Finance Committee, the senior Senator from Mississippi [Mr. HARRISON] was presiding, and he said:

> Mr. Acheson, you have been nominated as Under Secretary of the Treasury, and the committee felt they wanted to look you over and might want to ask you some questions.
>
> Mr. ACHESON. I am delighted to come up, Senator.

Mr. President, I am going to leave out some of the questions and answers that do not seem relevant.

Mr. Acheson said:

I was born in Connecticut and lived there until after the war. Then I came down to Washington as secretary for Mr. Justice Brandeis and intended to stay only a short time with him, and I stayed 2 years, and then went into Judge Covington's law firm and practiced law ever since. I have lived in Georgetown and have a house there. Then I bought this place in Sandy Springs, and we live there a little more than half the year.

Senator COUZENS. What was your practice when you were with Judge Covington?

Mr. ACHESON. I have been almost everything, Senator. I think we have a considerable tax practice. I myself have done most of the international law work. I went with the firm for that purpose in 1922. Our firm was representing the Norwegian Government in an arbitration with the United States that took place under the old Permanent Court of Arbitration at The Hague, and I prepared that case, which took a little over a year, and went to The Hague and presented it to the court with Mr. Burling, the senior partner.

Senator COUZENS. Have you practiced before the Bureau of Internal Revenue?

Mr. ACHESON. Yes, sir; I have been frequently before the Bureau.

Senator COUZENS. Can you name offhand some of your clients?

Mr. ACHESON. It is hard to think of them now. Going backward—I am now representing Mr. James E. Davidson, of Bay City, Mich. That is my most recent thing. I was doing that up to a few days ago. Before that I represented Mr. Polk, publisher of the——

Senator COUZENS. Polk's Directory?

Mr. ACHESON. Polk's Directory. I represented the Bethlehem Steel Corporation in a case which originated—no, that did not originate in the Bureau. That was in the Court of Claims. These things have completely gone out of my mind.

Senator COUZENS. Perhaps you could get a list and give it to us later on, if it is more convenient?

Mr ACHESON. That will be a very simple thing to do. They are largely individual taxpayers. There are some corporate taxpayers, but not very many.

Senator COUZENS. Are the cases still open or closed?

Mr. ACHESON. I think there are about three that are still open.

The CHAIRMAN. Do you recall those cases that are still open?

Mr. ACHESON. Yes; there may be more than three. The ones that are still open are Mr. James Davidson, an estate tax case. There is the case of one of the partners of Price Waterhouse, a comparatively small one, which is still open. There is the case of an individual, Daniel Altland, of Detroit, which is still open.

Senator COUZENS. How did you come to get all of these Detroit cases? Most of everything seems to come from Michigan.

Mr. ACHESON. Mr. Bonchron, who is a partner of Price Waterhouse, has been a friend of mine for a long time, and almost all the things he has here he sends to me.

The CHAIRMAN. Judge Covington, your law partner, was on the bench of the Supreme Court of the District here, was he not? He was chief justice?

Mr. ACHESON. Chief justice; yes, sir.

Senator BARKLEY. And a former Member of the House?

Mr. ACHESON. Yes.

Senator CONNALLY. Was the case you had in Norway these shipping claims?

Mr. ACHESON. Yes.

Senator BARKLEY. These tax cases—are they for refund or are they protesting against increased assessments?

Mr. ACHESON. I think there is only one case for a refund that I recall now. That is the case of what was the First National Bank of Detroit, in regard to its 1929 and 1930 tax. That has now left the Bureau and there will be suit in the district court of the United States. The Bureau has assessed the tax finally, the tax has been paid, and the next step is a suit for refund.

Senator KING. Are any of these dealings that you had, or your relations, with the tax department of the Government such that they would prove embarrassing to you in the duties of this office?

Mr. ACHESON. I do not think they would in any way, Senator.

Senator COUZENS. You would have to pass upon the decisions, I suppose, that the Bureau might render, since I notice the law requires the Treasury to approve those matters, and I suppose the Under Secretary—you, as Under Secretary—would have that responsibility?

Mr. ACHESON. I suppose I would in respect to any of the refunds. Cases of additional taxes would not, as I understand it, come before me at all.

Senator REED. Mr. Acheson, what financial experience have you had?

Mr. ACHESON. I have had practically none, Senator.

Senator REED. Have you made any study of public finances at all?

Mr. ACHESON. None at all.

The CHAIRMAN. Where did you attend school, Mr. Acheson?

Mr. ACHESON. I went to Groton School, in Massachusetts, and I went to Yale University and the Harvard Law School.

Senator BARKLEY. Were you an applicant for this place?

Mr. ACHESON. No, sir; I was not.

Senator COUZENS. Who was your sponsor—Senator Tydings?

Senator TYDINGS, who was present, said:

Of course, of course.

The CHAIRMAN. You said you were not an applicant for it, Mr. Acheson?

Mr. ACHESON. Not at all.

The CHAIRMAN. The suggestion came from without?

Mr. ACHESON. I had absolutely no knowledge of this at all until the Secretary asked me to come over and see him; and when I went over he asked me if I would do this job for him.

Senator COUZENS. Is your firm also a representative of the International Telephone & Telegraph Co.?

Mr. ACHESON. Yes; they are.

Senator COUZENS. And Mr. John Marshall is also a member of your firm?

Mr. ACHESON. He is associated with our firm. He is not a member of our firm.

Senator COUZENS. Do you represent in any way the Radio Corporation of America?

Mr. ACHESON. I believe that we do. Whether we represent them generally or in specific litigation, I don't know. I myself have never had anything to do with those general retainers, and I don't know what goes on exactly.

There is a suit, I believe, in the Court of Appeals of the District of Columbia, and I understand that our firm is representing the Radio Corporation there

Senator COUZENS. Do you represent the Van Sweringens in any cases?

Mr. ACHESON. Mr. Marshall does. That is his own retainer. My firm has nothing to do with that and is not connected with it in any way, either sharing in the fees paid or participating in any advice. We have no knowledge at all of what is done in that.

Senator COUZENS. You have quite a lot of corporate affiliations, do you not?

Mr. ACHESON. My firm does.

Senator BARKLEY. Do you represent any New York banks that are known as "international bankers"?

Mr ACHESON. In these recent hearings Judge Covington represented the National City Bank. Whether that is an international bank or not, I do not know.

Senator COUZENS. I would say it is a very decided international bank, according to the testimony before the Committee on Banking and Currency.

Senator BARKLEY. Does your firm represent J. P. Morgan in any way?

Mr. ACHESON. Mr. John Davis represents J. P. Morgan & Co., and he occasionally asks Judge Covington for his advice on specific questions. We have no general retainer or any specific employment by them.

I want to point out that Mr. Acheson has for many years been a partner of Judge Covington, and Judge Covington has been an adviser of J. Pierpont Morgan & Co., the Radio Corporation of America, the American Telegraph & Telephone Co., and a great many other corporations and interests a list of which I have had printed in the RECORD as a result of a list submitted to the committee by Mr. Acheson.

Further on the following occurred:

Senator CONNALLY. In addition to the duties of the Under Secretary, as the first assistant to the Secretary, does he have supervision over any particular departments over there?

Mr. ACHESON. I understand, Senator, the things that are directly under him are those bureaus that have to do with the public debt. I have a very vague idea of what are the duties of an Under Secretary, but I believe the financing of the Government and anything to do with the public debt comes directly under him.

Senator MCADOO. The fiscal bureaus come under the Under Secretary, do they not?

Mr. ACHESON. I think there is one Assistant Secretary, Senator MCADOO, who has charge of the internal revenue and another who has the customs.

Senator MCADOO. I know that; but when I was Secretary of the Treasury the technical division was the fiscal bureau, so-called, and they were particularly in charge of one of the Assistant Secretaries. But since then I think the Department has been reorganized to some extent, and the Under Secretary having been created, I think he is considered as the right arm of the Secretary, and he acts generally with reference to all bureaus on all questions that arise in the Department.

Mr. ACHESON. That is my understanding.

Senator MCADOO. And he is practically the Secretary in his absence. Isn't that the jurisdiction you will exercise?

Mr. ACHESON. I think that is about it.

Senator KING. With your understanding of the technique and the modus operandi in and of the Treasury Department, would you say your duties would be similar to those which were performed by Ogden Mills?

Mr. ACHESON. When he was Under Secretary?

Senator KING. Yes.

Mr. ACHESON. I presume they would be.

I want to point out that the Senator from Utah [Mr. KING] intimated that Mr. Acheson was familiar, in the language of the Senator from Utah, "with the modus operandi and the technique of the Treasury Department," and yet in answer to a query from the Senator from Pennsylvania [Mr. REED], he made the statement that he had no familiarity with finance and no familiarity with the Treasury Department.

I read further from the hearing:

Senator COUZENS. Have you ever represented the Insulls in any case?

Mr. ACHESON. I don't think we have ever had anything to do with the Insulls.

Senator COUZENS. None of your firm has?

Mr. ACHESON. That is my understanding.

Senator COUZENS. Have you ever represented any of the Kruegers' companies?

Mr. ACHESON. Not at all. We have represented the Swedish Government.

Senator COUZENS. As against the Kruegers?

Mr. ACHESON. Yes.

The CHAIRMAN. Are there any other questions? We thank you very much for coming up, Mr. Acheson.

Senator TYDINGS. Apart from the fact that Mr. Acheson comes from Maryland, I believe you gentlemen will find he will be a pleasant surprise in the office.

I have since been encouraged to withdraw my objection to Mr. Acheson on the alleged statement that he is a Socialist, and I assume that is what the Senator from Maryland meant when he said Mr. Acheson would be a pleasant surprise. It was apparently thought that would appeal to me, and the assumption was based on the theory that he had been a former associate of Justice Brandeis, and having, apparently, some of Justice Brandeis' liberal thoughts, it was suggested to some of my friends in the Senate that I ought to withdraw my opposition to Mr. Acheson.

At this point I want to repeat, Mr. President, that nothing I am saying against Mr. Acheson is meant to cast the slightest reflection on him as a man. But, as I said Friday evening, ever since I have been in Congress I have resisted filling the Treasury Department, the very heart of the Government, with men who had either served special interests or would have special-interest connections.

Mr. President, so far as I can remember there has always been a complete coalition in the Treasury Department between Democrats and Republicans. Never during all of the investigations the special Senate committee made of the activities of the Bureau of Internal Revenue were we able to get a rise out of the Democrats, and I do not expect now that I shall get a rise out of the Republicans by pointing out the kind of men who are being placed in the Treasury Department.

Mr. President, when it comes to the management of money there is no partisanship. No two men of wealth, either Republicans or Democrats, ever fought each other seriously. Their interests are against it. They are solidified, and there is the finest working coalition between all parties when it comes to the control of the Treasury Department of the United States.

The Senator from Maryland [Mr. TYDINGS] said that Mr. Acheson would be a pleasant surprise, and, now that the Senator from Maryland is in the Chamber, I assume he is going to tell us why he is to be a pleasant surprise; and I want to apologize to the Senator for going ahead Friday evening when he was not here, but I did so upon the insistence of the Chairman of the Committee on Finance, who had charge of the nomination.

The Senator from Maryland said:

He has great ability and great industry and holds high conception of any governmental responsibility, and it is a real pleasure for me to endorse him. I am satisfied the committee will have no regrets if they endorse him.

Senator KING. Mr. Woodin, then, did not initiate the movement to bring him into the Treasury; it came from you; is that it?

Senator TYDINGS. Partly, he did. He wanted a man who had not too much financial connections with banks and so on, yet who had enough general background and industry and general understanding to act in that office, so he told me over the telephone.

Senator KING. He didn't know Mr. Acheson?

Senator TYDINGS. He knew him, but not well. But he investigated him, he told me, very thoroughly and he seemed to be the very character of man he wanted.

The CHAIRMAN. Thank you very much.

Mr. President, of course there is no doubt about the fact that Secretary Woodin, who had been long associated with New York interests, had to be satisfied that Mr. Acheson was right before he approved of his nomination, and obviously the Secretary of the Treasury made a very thorough investigation of Mr. Acheson's past connections and his activities; otherwise he would not have approved of his appointment. So I am quite satisfied that the Senator from Maryland told the truth.

Mr. President, as I said Friday evening, I know that the nomination will be confirmed, and I know that I could do no more than make a public record of the kind of men being placed in the Treasury Department, and the associations of these men. I am quite sure that in a short time there will come before us a nomination for Commissioner of Internal Revenue. I think that there will be more to be said about that nominee as a man, and his connections, which will be more appealing to the Senate, perhaps, than mere opposition to Mr. Acheson on the theory of his previous connections.

I assure the Senate and the public that when these gentlemen have been confirmed and have taken office, every act they perform will be closely watched, because I am quite sure, as I said last Friday evening, that the President of the United States, with his multitude of duties, does not know the former connections and all of the activities of the men he is placing in the Treasury Department.

Mr. TYDINGS. Mr. President, I shall detain the Senate for only a few minutes. I have known Mr. Acheson for a long time. I know something of his political philosophy. I think I know something of his beliefs and something of his integrity of character.

Mr. Acheson comes from Connecticut, but during all the time the Republican Party has been in power here in Washington, during which time he has been practicing law, insofar as I know he has not surrendered his political beliefs for any monetary, partisan, or other advantage. He has remained an active member of the Democratic Party.

It has not been said, but should be said, that Mr. Acheson has represented the Union of Soviet Socialist Republics. It might be contended that because he represented modern Russia in a case before the Tariff Commission he is just the opposite of the kind of man who would represent Mr. Morgan, that because the Soviets have been his clients, therefore he is "red" or "radical", or unfitted to hold the office to which he has been nominated.

Mr. Acheson has also represented labor unions. Indeed, very recently in my own State he appeared for one of the typographical unions in Baltimore City.

Mr. Acheson secured this business not because of any connection he had, but because he possessed the one thing which this Government requires; that is, ability backed up with character and integrity. If some financier from Wall Street had been selected, I think that many of the observations made by the Senator from Michigan would have been well grounded. But Mr. Acheson has had no financial connection with Wall Street. He has been employed as an attorney, and employed as an attorney because he had outstanding ability. I am told that in the Supreme Court of the United States he occupies a very enviable position, gained from the very concise and logical way in which he has presented many intricate matters before that august tribunal.

Mr. Acheson is not a reactionary. I think he is a progressively minded man. I do not think he is a mossback in any sense of the word, and I do not think the connections with large financial interests which he has had, together with connections with labor and communistic interests, have in any way altered his viewpoint of life or of government. I know that he has the highest concepts of citizenship. I know that he will give every ounce of his energy, every bit of his ability and integrity to the performance of the duties of his office in such a manner as will, in my judgment, please the Senator from Michigan.

What is an attorney to do? If he has the ability to attract a case he does not have to sleep in bed with the man who hires him, nor to share the political philosophy of the man who employs him, nor to accept ill-gotten gains perchance from the man who wants him to act as a lawyer. All he has to do is to present that side of the case. Mr. Acheson has done that with signal ability, and although comparatively only a young man, has won for himself a place of esteem in the highest courts of the land.

May I say to the Senator from Michigan that I am not out of sympathy with the observations he has made, and I admire his zeal in trying to keep public office removed from sources that might, to some extent, influence it unwisely; but I can assure him that if Mr. Acheson makes mistakes they will not be because of any desire to help one interest or one group at the expense of the country or of the population as a whole. I can assure him, from my contact with Mr. Acheson, that everything of citizenship which he has to give will be given to the furtherance of the duties of his office, in the hope that he may, by reason of his executive ability and industry, win the approval of the country in the discharge of his duties.

Mr. COUZENS. Mr. President, will the Senator from Maryland yield to me?

Mr. TYDINGS. Yes; I yield.

Mr. COUZENS. May I ask the Senator if it was on his own initiative that Mr. Acheson's name was submitted by the President for nomination for Under Secretary of the Treasury?

Mr. TYDINGS. No; it was not. I had recommended Mr. Acheson for Solicitor General of the United States, and I am glad to state—and it is no breach of confidence to do so—that those in high authority would have liked to give him that position, because of very high recommendations from the bench as to his ability. I believe he was selected because he is an industrious man, with a very good grounding in history and philosophy. He is exceptionally well educated; he has been since he left college a student in a multitude of subjects, and it will not be long before his ability will be shown in the Treasury Department.

I do not believe a man has to work in a bank; I do not believe a man has to be an international banker or even a city banker to be a good Secretary of the Treasury. I will concede such an experience should be valuable, but there is no mystery about that office. It is nothing but a large book-keeping office, with sound principles upon which it should be run. I know that Mr. Acheson has the ability to master the duties of the office of Under Secretary of the Treasury and will be a very valuable official in the conduct of the affairs of the Government.

Mr. Acheson, insofar as I know, was sent for to receive the "plum" at the hands of the administration; he was asked whether he would take it; and I was simply consulted in the matter, because I happened to be the only Democratic Senator from Maryland. I was asked if I would object to him. I said then, as I say now, that I am genuinely glad to see him get the office and am sure he will discharge his duties in a highly creditable manner.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the confirmation of the nomination?

Mr. ROBINSON of Indiana. Mr. President, I ask for the yeas and nays.

The yeas and nays were not ordered.

The nomination was confirmed.

### CONFIRMATION OF EUGENE R. BLACK—NOTIFICATION TO THE PRESIDENT

Mr. GEORGE. Mr. President, I wish to renew the request for unanimous consent that I submitted to the Senate on yesterday that the President be notified of the confirmation of the nomination of Mr. Eugene R. Black to be a member of the Federal Reserve Board. The Senator from Oregon asked that the request go over for the day, but for the same reason stated yesterday I hope there will be no objection today to the request that the President may be notified.

The PRESIDING OFFICER. Is there objection?

Mr. McNARY. Mr. President, it will only require one further day for the consideration of this matter. The President will then be automatically notified. Inasmuch as a number of Senators desire that that procedure be followed, I think the Senator from Georgia had better not press his request at this time.

Mr. COUZENS. Mr. President, may I ask the Senator what was the request which was made by the Senator from Georgia?

Mr. McNARY. The request was for the notification of the President of the confirmation of Mr. Eugene R. Black as a member of the Federal Reserve Board, to which I objected yesterday.

Mr. GEORGE. I have asked that the President may be notified of the confirmation of Mr. Black's nomination.

Mr. McNARY. I stated to the Senator from Georgia that I objected yesterday because there are a number of Senators who like the old procedure to be followed rather than taking the short cut. We have had two executive sessions and tomorrow, automatically, the President will be notified of the confirmation; so I think the Senator from Georgia had better withhold his request.

The PRESIDING OFFICER. Objection is made.

Mr. TYDINGS. Mr. President, I suppose what the Senator from Oregon has just stated applies to other nominations, and I therefore will not make a request similar to that which has been made by the Senator from Georgia.

### THE JUDICIARY

The legislative clerk read the nomination of Francis A. Garrecht, of Washington, to be United States circuit judge, ninth circuit.

The PRESIDING OFFICER. Without objection, the nomination is confirmed. That completes the calendar.

### LEGISLATIVE SESSION

Mr. ROBINSON of Arkansas. I move that the Senate return to legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

### ARMS EMBARGO AND NEUTRALITY—ARTICLE BY EDWIN M. BORCHARD

Mr. REED. Mr. President, I ask unanimous consent that there may be printed in the CONGRESSIONAL RECORD an article on the Arms Embargo and Neutrality, by Edwin M. Borchard, of the Yale University School of Law.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

#### THE ARMS EMBARGO AND NEUTRALITY

In the closing days of the Hoover administration, the United States Senate passed, but then reconsidered, a joint resolution reading, in part, as follows:

"Joint resolution to prohibit the exportation of arms or munitions of war from the United States under certain conditions

"*Resolved, etc.*, That whenever the President finds that in any part of the world conditions exist such that the shipment of arms or munitions of war from countries which produce these commodities may promote or encourage the employment of force in the course of a dispute or conflict between nations, and, after securing the cooperation of such governments as the President deems necessary, he makes proclamation thereof, it shall be unlawful to export, or sell for export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country or countries as he may designate, until otherwise ordered by the President or by Congress."

The resolution did not reach the floor of the House of Representatives, but in committee was amended to limit its application to the American continent. The new administration has again pressed for the passage of such a resolution, and it was reported out, on a strictly party division, by the Foreign Affairs Committee on March 28, 1933, without amendment. The matter is so important, that John Bassett Moore felt impelled to caution the House and the country against the resolution. Its legal aspects, in the light of the official memorandum on The Arms Embargo and Neutrality submitted to the House committee on February 7 by the Secretary of State, deserve careful consideration.

It will be observed that the resolution in effect authorizes the President, whenever he finds that "dispute", "conflict", or war, de facto or de jure, exists between nations "in any part of the world" or that "conditions exist" anywhere which by the supply of arms might lead to "the employment of force" in their development or solution, to prohibit, "after securing the cooperation of such governments as the President deems necessary", the export of "arms or munitions of war" from the United States "to such country or countries as he may designate."

It is believed that the grant of such power to the President is unconstitutional and dangerous. It gives the President the power (1) to make treaties with foreign governments without the consent of the Senate; (2) to enter into alliances without the consent of the Senate; (3) to violate the neutrality laws of the United States by embargoing the shipment of arms to one of two or more belligerents; and (4) in effect to declare war on the country thus selected without the consent of Congress.

No such power has ever been conferred on any President, and it is believed unwise, as well as illegal, for the House of Repre-

sentatives and Senate thus to abdicate their constitutional functions.

It will be observed that no restriction of any kind is laid upon the President as to the countries with whom he need "cooperate." He may make a treaty or an alliance with any countries or with as many or as few as he wishes, without consulting any desires but his own.

The export of arms is one of the most important of trades, because it has not only commercial, but political, implications. It can so vitally affect the course of hostilities abroad that it has always impinged upon international law. The free and unrestricted supply of arms to all belligerents by neutral citizens is not illegal and is defended on the ground that it is not the duty of neutral governments by international law to prohibit their citizens from manufacturing and selling arms, so long as the privilege of purchase is open to all belligerents. On the other hand, some countries, realizing the resulting danger of enlarging and prolonging foreign conflicts and the danger to their own and their citizens' neutrality, have, like the Scandinavian countries, Brazil, and Switzerland, on occasion, by statute prohibited the export of arms in time of war.

But in either case, the permission or prohibition must, in order to be defensible in international law, apply to all the countries at war, and not to some of them. Impartiality is the keynote of neutrality (Oppenheim, 4th ed., 563). If some only could be selected either for the permission or prohibition, neutrality would at once be violated and the country discriminated against would have a legitimate casus belli. The discrimination is an unfriendly and hostile act of greatest significance, and against a strong power might very readily be a prelude to war. It is, indeed, a warlike act, if not itself an act of war. It is as dangerous as the boycott which some Americans urged against Japan in the spring of 1932, but which Congress and the country wisely rejected. It is in fact a boycott of a special kind.[1] It can, moreover, hardly be applied by governmental action without breach of the usual commercial treaty, if any, concluded with the country against which it is applied.

The President is thus given the power to make an alliance and a treaty for hostile action against a third state or states, without consultation with, and hence without the consent of, Congress. Such power, even in time of war, was refused to the last Democratic President. Now, in time of peace, without any restrictions or limitations, it is proposed to confer it upon the occupant of the Presidential office.

As already observed, the resolution contemplates a hostile act which empowers the President to breach our commercial treaties, violate and impair the neutrality of the United States—perhaps its most valuable asset and safeguard—and take a step which every self-respecting belligerent would probably regard as a casus belli. It amounts to a declaration of war against the country singled out for the application of the embargo.

It is said, however, in the official memorandum submitted in its support that the existing embargo power, in cases of domestic violence on the American continent and in China, has been employed "with great effect and negligible friction." One may respectfully venture to doubt this conclusion. As in the case of Brazil in 1930, the embargo was employed against the revolutionary party, who the next day took over the seat of government. The unneutral act involved produced serious criticism.[2] A few days after declaring an embargo against the revolutionists the United States recognized them as the Government of Brazil. Contrary to a common assumption, there is no duty upon the United States to stop a revolution abroad any more than it was the duty of Russia or Spain to stop the American Revolution. To undertake such a function, indeed, is a breach of neutrality, and hence illegal as a matter of international law. It involves intervention in the affairs of a foreign country and has already incurred for the United States distrust on the American Continent. It enables the administration to play favorites abroad, interfere when it should abstain, and thus forfeit that impartiality and neutrality which is the keystone of foreign respect. The interfering partisan often invites and enlists the hatred and contempt of both sides, and experience might indicate that the Government is as likely to be mistaken as it is to be correct in estimating the merits of a foreign controversy, even if such judgments were possible and even if it were deemed an American duty to be a judge.

But in interfering in domestic struggles on the American continent by withholding arms from one side or the other, no great power has as yet been affected. The United States is not likely to get into full war because of its breach of neutrality or other error in choosing sides. But when it comes to dealing with powers "in any part of the world", not in their domestic struggles or civil wars but when engaged in foreign wars, much more responsibility is assumed. It enables the United States to participate in foreign wars by withholding arms from one side or another, as the President sees fit, and perhaps thus to determine the outcome of the war. It is to be doubted whether any single chief of state anywhere in modern times has had, or claimed, such unrestricted power.

It seems strange that Senators who were not willing to have the United States join the League of Nations, where the United States would be but one of many powers and where action under article 16 could be taken only by unanimity, should be willing to permit the President, on his own unreviewable election, to join with one or more powers of the League to do that which article 16 at least safeguards by the requirement of unanimity.

The Senate has declined to pass the Capper resolution. The present resolution would seem to be equally, if not more, dangerous. It, in effect, authorizes the President to make war in the name of peace.

The official memorandum submitted in its support states that in case of a foreign war the embargo would "not, of course, be employed unless there was general cooperation and united opinion among the principal powers who could supply munitions." There is nothing to indicate any such limitation in the resolution. It seems unusual statutory construction to suggest that an unlimited and unrestricted power could or would only be used under limitations and restrictions. To the suggestion that the President would not abuse the power given, the answer may be made that there is no test of "abuse" afforded and that the same argument would sustain the conferring of complete dictatorial powers. It is not readily apparent what beneficial purpose or contemplated exigency the arms embargo is supposed to subserve.

The memorandum indicates in its paragraph marked "Second" that the resolution is to be used against an "aggressor." No more shoddy and shallow, if not mischievous, conception has come out of the League of Nations than the conception of "aggressor." Its origin and purpose are well known, but its effect has been to confuse the world. It awakens in many minds a kind of emotional morality which enables indignation and violence to clothe themselves in the mantle of righteousness. Possibly that is one of the reasons why the world is now twice as heavily armed as it was in 1913, with disorder and chaos extending their domain. The idea that the peace of the world is promoted by combining against an "aggressor" is, it is believed, false and romantic. It threatens and requires war to produce peace. Fortunately, that idea had not developed when the United States was expanding on this continent. To prevent the natural development of strong and responsible states by supporting the chaotic, the weak, and the disintegrating is a sorry service to peace and stability. The "verdict of the League of Nations", for which the memorandum shows so much respect, is a political verdict and must necessarily be so. The embargo resolution may be deemed a temptation to the President to carry out the "verdict" of the League of Nations, provided he agrees with that "verdict." Thus, if the League should determine that Japan has been an "aggressor",[3] the United States, not a member of the League, might be placed in a position to carry into execution the verdict of a League it itself refused to join, against a nation that left the League for one of the very reasons on which the United States declined to enter.

The memorandum suggests that the "old conception of neutrality as a possibility is gone in the modern world if large nations are involved in war." It is respectfully submitted that this is a deplorable and unjustified view, certainly so long as the neutrality laws remain on the statute books and neutrality treaties are concluded. Twenty or more nations, including some fairly large ones, exercising their considered judgment, decided to remain neutral in the late war. Their acumen has been rewarded. The supposition adduced in the memorandum implies that it is not possible to remain sensible when others lose their heads, but that the sense of self-interest and of self-preservation have gone from the world, their places to be taken by vacuity or hysteria. I am not prepared to believe that the entire world has lost its senses and that anarchy has taken the place of law. Washington and Jefferson were able in time of stress to preserve their sense of the fitness of things and of the self-interest of the United States. The very shortness of war which science promises should make neutrality easier, and not more difficult, to preserve. As it is assumed that the life and reputation of the United States will be a matter of importance to the future statesmen of the country, it is likely that the United States will again remain neutral.

The suggestion that it is not possible to remain neutral is negatived by the fact that countries much more closely affected by the late struggle than the United States, such as the Scandinavian countries and Holland, were perfectly able to to maintain their neutrality. In all the wars fought since 1919, including that between Poland and Russia, Greece and Turkey, Japan and China, and those on this Continent, the nonparticipating members of the League of Nations and the United States remained neutral. Neutrality has been stipulated in innumerable treaties since 1919, including treaties between European powers and those concluded at Habana in 1928. It is interesting to note that immediately upon the publication of the Report of the Committee of Nineteen, denouncing Japan, the British Government declared an embargo on arms, not against Japan but against both belligerents, for the very purpose of preserving British neutrality. When the embargo was lifted neutrality was still the keynote of the policy; and this, doubtless, because the major responsibility of every government is to its own people, a fact which alone is likely to prevent the execution of general schemes for alleged universal peace or security by threat of or actual hostility.

The conception that every war in which a large power is engaged must involve the world and that neutrality is a thing of the past

[1] Some of the legal consequences of such a boycott, which the proponents of an arms embargo against a single belligerent may not adequately have considered, are set out by Messrs. Hyde and Wehle in their article, "The Boycott in Foreign Affairs."

[2] John Bassett Moore, Candor and Common Sense, address before Bar Association of New York, Dec. 4, 1930, p. 20.

[3] The report of the Committee of Nineteen does not characterize Japan as an "aggressor"; it is said that this occission was intentional, to prevent the sanctions of art. 16 from coming into force.

is a view reconcilable only with permanent anarchy in the world. It takes no account of the self-interest of nations in refusing to be dragged into a war in which they have no concern. It is doubted whether the masses of the people in most countries will permit themselves freely to be slaughtered in wars in which they have no interest. Moreover, if neutrality were really a thing of the past, the Disarmament Conference is directly contrary to the interests of all the participating nations, for in that event all nations must, and should, arm to the teeth. If law is dead, then force is the only arbiter. It is to this conclusion that the "peace" advocates who toy with such conceptions as combinations and embargoes against "aggressors", "verdicts of the League of Nations", "any war is an attack on all mankind", and "war to end war" risk misleading the world; and its present state is in part attributable to such unhistorical and unrealistic, yet dangerous, conceptions.

The mere fact that the commerce of the neutral may be "under fire"—an assumption which doubtless presupposes the continued existence of neutrality—is no reason for plunging a nation into war and risking its extermination. If neutral rights are, despite protest, legally violated, there are other sanctions than war available. Many claims conventions in the past have been set up to determine the liability consequent upon a belligerent's violation of the neutral rights of neutral powers and their citizens.

The embargo resolution, it is submitted, should pass only if amended to safeguard the neutrality of the United States under all circumstances; that is, it should be made impossible to employ it against one belligerent alone, but only against both or all the belligerents. In addition, it should reject any implication of the abdication by House and Senate of their constitutional functions, either with respect to the making of treaties or alliances with foreign powers, or, alone or in combination with other powers, entering into hostilities.

THE SILVER RACKET—ARTICLE BY NEIL CAROTHERS

Mr. REED. Mr. President, I ask unanimous consent that there may be printed in the RECORD an article entitled "The Silver Racket", by Prof. Neil Carothers, which appeared in last Sunday's New York Herald Tribune.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Herald Tribune, May 14, 1933]

THE SILVER RACKET—WITH INFLATION AUTHORIZED AND WITH BIMETALLISM AND THE PAYMENT OF PART OF THE WAR DEBT IN SILVER UNDER CONSIDERATION, SILVER AGAIN ENTERS THE AMERICAN STAGE, WHERE IT HAS OFTEN PLAYED A TRAGIC ROLE—HERE IS THE FIRST OF TWO ARTICLES ON ITS SINISTER HISTORY

By Neil Carothers, professor of economics and Director of the College of Business Administration at Lehigh University

Imagine, if you will, another people in another age—the French Nation in the time of Louis XV, poverty-stricken and economically illiterate. Watch a clever and designing man, presenting with facile reasoning to a deluded king and an ignorant people a scheme for unlimited wealth for all. See the king and people embrace this scheme, and in the end collapse and ruin. Thus a susceptible ruler and a helpless people and a plausible adventurer, France and Louis XV and John Law and the Mississippi Bubble inflation scheme, in the year 1720.

Turn to your own country in the year 1933, and see a rich and powerful people, sorely stricken, wretched, and rebellious after 4 bitter years of distruess. Listen to the economic Babel, a bewildering confusion of theories, proposals, and panaceas, beside which the Biblical "confusion of tongues" was lucidity itself. Note the rival devices, actual and proposed—beer, planting trees, closing 18,000 banks and reopening 15,000, a 6-hour day and a 5-day week, guaranty of business profits, payment of the debts of those who speculated in land, a minimum wage, a "planning board" to mobilize industry, and on indefinitely; but far outnumbering these chimeras, endless proposals for tinkering with the currency.

In all the realm of human affairs there are no problems so complex, no forces so delicate, as those involved in the relationship of money to prices, credit, and international exchanges. It was with an unconscious wisdom that Will Rogers said that there were two kinds of crazy people, the ordinary kind who work jigsaw puzzles and the special kind who think they understand inflation. One false step in managing the intricate mechanism of money and credit and the savings of millions of people are swept away; another kind of mistake and a ruinous orgy of speculation begins; another, and a government goes bankrupt.

Consider finally the body that controls this delicate financial mechanism, the Congress of the United States, in the main without equipment to grasp the fundamental principles of monetary science, not even aware of the major events in the history of the country's currency. Look still further, and find in the Senate a group of men, shrewd and powerful, committed to the interests of a single monetary commodity.

This is the setting for the extraordinary drama in which silver has once again made her reentry on a stage that has repeatedly presented an American tragedy, with silver in the leading role. All through American history there runs a sinister story of silver, from the mistaken adoption of bimetallism by Alexander Hamilton to the raid on the Public Treasury by the Pittman Act of 1918. Always lurking in the wings, silver comes on the scene when the economic lights are dark. President Roosevelt's inflation measure of April 20 contained three essential provisions—one to authorize a vast issue of paper money, another to pare down our standard gold dollar, and a third to permit payment of the war debts in silver bullion.

It is not within the province of this article to discuss the expediency of the first two provisions. They constitute the most extraordinary proposals ever made by a President in time of peace. The critical condition of the country may or may not justify them. We are concerned here only with the provision for payment of the war debts in silver. Even the well-informed student of finance was mystified by this proposal. How can it help the unemployed millions or restore industry? What is it for?

The answer is to be found only in the long and dramatic story of silver. It is an older history than the Bible's, and no page of it lacks color and interest. But we must begin with modern times. A hundred and fifty years ago every important nation of Europe was waging a losing struggle with bimetallism, which is merely a monetary system in which prices are quoted and debts are paid in two metals—gold and silver. In ancient times other metals were used, and Russia tried the plan in modern times with platinum. For any single nation bimetallism is impractical—it will not "work." One metal or the other is always disappearing. For a century England, France, and Spain, with discordant ratios between the two metals, took from one another their small silver change or their valuable gold reserves. England first, then the Latin countries of Europe, and Germany, and Japan abandoned bimetallism. Germany conquered France in 1870 and used a billion-dollar gold indemnity to set up her single gold standard.

Hamilton established American bimetalism in 1792, with the same silver dollar we have now and a gold dollar somewhat larger than the one we use today. The system didn't work. Our gold was drained to England. In 1834 and 1837 Congress reduced the size of the gold dollar, making the ratio 16 to 1. This caused the disappearance of all the silver change in the country, creating chaos in retail trade. In 1853 Congress abolished bimetalism for all the silver coins except the dollar. Since then our small silver coins have been made of silver of reduced weight and sold by the Government at a profit. A dime contains about 3 cents' worth of silver. They could just as well be made of paper or nickel or aluminum. Their silver content has nothing to do with their value.

The silver dollar was left as it was. Legally we were still on the double standard at the ratio of 16 to 1. At this ratio silver dollars could not be coined. The silver dollar had never been in use and was unknown at the time of the Civil War. In 1873 the coinage laws were revised and the silver dollar was dropped. The action was quite deliberate, but Congress was entirely unaware of the importance of the measure. The United States had stumbled into the gold standard.

The silver mines were increasing their output of the metal, and the world-wide adoption of the gold standard reduced the market. The price of silver was falling. When the ratio rose above 16 to 1 it was profitable to take silver bullion to the United States mints and coin it, for the first time since 1834. This situation developed in 1874, but the law of 1873 had abolished silver coinage. From that day to this the silver interests have waged a ruthless, relentless struggle to force the Government to subsidize the silver industry. They have in the past influenced Secretaries of the Treasury and Mint Directors, resorted to propaganda, logrolling, and political bargains, slipped jokers into financial legislation, and browbeaten administrations.

They have achieved three major measures. One of those was the Pittman Act of 1918, too involved for explanation here. The other two we must glance at briefly. The double standard was abolished just at the beginning of the long "depression of 1873." It was in no way connected with it. A systematic propaganda to make the country believe that the coinage law was responsible for the depression, that it was a "crime" perpetrated by eastern capital, and that restoring bimetallism would end the depression resulted finally in the passage of the infamous Bland-Allison Act of 1878. In brief, it commanded the Treasury to buy the output of the United States silver mines and coin it into dollars. By this time the dollar piece was worth about 80 cents. It was clumsy and unknown. The people would have none of it. Thereupon the Treasury passed them out to the people by a trick. It issued "silver certificates", simply warehouse receipts for the dollars, to the people. The rejected dollars it piled in the vaults. The dollar bill in your pocket is probably a silver certificate. It calls itself a dollar. Actually it is a receipt entitling you to a silver dollar, worth as metal at the present writing about 28 cents. A few weeks ago it was worth about 19 cents. The certificate is worth a dollar to you so long as the Government's credit is good; no longer. The dollar your certificate stands for is one of 500,000,000 that lie in a dead and useless mass in the Treasury, where they have been for 50 years.

The Bland-Allison Act stimulated silver production. In 1890 the silver interests in Congress traded votes and put through the Sherman Act. One of the provisions of this famous measure amended the earlier act so that the Government was forced to buy about twice as much silver. The two laws resulted in the coinage of nearly 600,000,000 silver dollars. The country's finances could not digest this mass. Worth only 50 cents, the coin could not be used to pay foreign debts. Our American gold slipped away. The coin could be used to pay taxes, and the Treasury paid out its gold and received silver dollars in tax payments. In the fall of 1893 a desperate panic resulted. It ushered in a depression in many respects as unhappy as the one we now endure.

What is the significance of this curious proposal to permit the payment of war debts in silver, presented by President Roosevelt a few weeks ago and recently adopted by the Congress of the United States? It is merely the Bland-Allison Act of 1878 in new dress. Silver, like all other commodities, has fallen in price during the depression. The decline in price has been much less than that of most of the really important and useful commodities, such as cotton, wheat, or copper. The average price of silver was 58 cents an ounce in 1928. It was 28 cents in 1932. The silver industry, in contrast to all the important industries, has been fortunate. And yet this fall in a commodity of no importance has resulted in constant political turmoil, endless discussion, and international bitterness. During President Hoover's entire administration he was pressed and harried by the silver interests.

The depression is the primary cause of the decline of the value of silver. Overproduction as a result of the subsidy granted by the Pittman Act of 1918 is another. A third is the gradual abandonment of silver as a material of coinage the world over. In all the world only China is on the silver standard, with some Latin-American countries partly involved with silver. Even for debased small-change coinage, silver is in some respects less satisfactory than copper, nickel, and aluminum. Many countries have been melting up their coins and selling the silver as bullion. In 1926 England set up a new currency system in India, accumulating in the process a large mass of silver amounting at one time to more than 400,000,000 ounces. Hard-pressed financially, England has been selling this bullion. Every possible expedient has been tried in an effort to coerce or frighten England into a promise not to sell this reserve. When President Hoover refused to bring pressure, he was publicly accused by a Senator of being a tool of England.

And here we find the explanation of the silver-payment clause. So long as England has silver bullion to sell, the price of silver will be depressed. The original proposal called for a limit of $100,000,000 to be accepted at a price of not more than 50 cents. The silver so received is to be deposited in the vaults, there to join the useless millions lying in the dust for the past half century. Against them silver certificates are to be issued to swell the volume of governmental liability and risk. But the silver never will be allowed to come out of the vaults. It will be taken off the world market forever. And the objective of the whole measure will be achieved, a rise in the price of silver. The mere announcement of the proposal drove the price of silver above 30 cents. When the Senate received the bill, it was amended to authorize the payment of $200,000,000 in silver. When this news was broadcast, the price of silver jumped to 36 cents. One more chapter is to be added to the history of silver legislation.

It is a tragic feature of our financial situation that the general public has neither the time nor the facilities for study of the financial forces at work. In all the vast mass of propaganda for silver, only one reason for Government action has been advanced. That is the contention that a rise in the price of silver will benefit India and China and thereby stimulate world trade. The argument is unsound. The Indian people are not on the silver standard, and have not been for 40 years. The statement that "silver is the money of half the world's population" has become a slogan of the silver interests. It is false.

China, the only important country on the silver standard, holds one fifth of the world's population, the vast majority coolies whose economic significance is zero. China's foreign trade is insignificant, less than that of the Argentine. She has actually benefited from the inflation caused by the decline in silver. A rise in the price of silver probably would damage the country. It would so greatly reduce Chinese exports that the reaction would probably still further reduce her purchases from the rest of the world.

Silver is a byproduct of the mining of more important metals. As such it has no cost of production, employs almost no labor, has no population group or area dependent upon it. The total value of all the silver produced in the United States in 1932 was $8,000,000 less than the value of the Eskimo pies produced in the same year. In the State of Nevada, which dictates the silver legislation of the country, the silver industry is of less economic importance than the hotels and night resorts of Reno.

So much for the provision for payment of the war debts in silver. But at the last moment the Senate adopted as part of the inflation measure a provision authorizing the President to reestablish bimetallism. This extraordinary proposal, pregnant with possibilities of reorganization of American economic life, is another story.

### REGULATION OF BANKING

Mr. BULKLEY. Mr. President, I move that the Senate proceed to the consideration of Senate bill 1631, the so-called "Glass banking bill."

The PRESIDING OFFICER. The question is on the motion of the Senator from Ohio that the Senate proceed to the consideration of a bill, the title of which will be stated.

The LEGISLATIVE CLERK. A bill (S. 1631) to provide for the safer and more effective use of the assets of Federal Reserve banks and of national banking associations, to regulate interbank control, to prevent the undue diversion of funds into speculative operations, and for other purposes.

Mr. McNARY. Mr. President, earlier in the day I conferred with the Senator from Ohio, at which time I expressed the hope that the motion would not be made today in the absence of the Senator from Virginia [Mr. GLASS]. A great many Members of the Senate on the minority side desire a little further time to consider this very important measure. The impeachment trial is now proceeding, and I believe, in the interest of economy of time and expedition we should go forward with the trial, at least during the week, and early next week or the latter part of the present week a motion such as the Senator from Ohio has made may more properly be in order. If the motion be delayed, it will give an opportunity to study this very important measure, and I desire to see the Senator from Virginia before the motion is made. He is absent today and I ask the Senator to withhold the motion until tomorrow.

Mr. BULKLEY. Mr. President, of course there is no purpose to proceed to the consideration of the bill this evening.

Mr. McNARY. I appreciate that.

Mr. BULKLEY. The impeachment trial will go on tomorrow until such hour as may be appropriate, in any event.

Mr. ROBINSON of Arkansas. Mr. President, may I say to the Senator from Oregon that the motion is made at the request of the Senator from Virginia, as I understand?

Mr. BULKLEY. It is.

Mr. ROBINSON of Arkansas. He is anxious to have the bill made the unfinished business. Of course, from time to time there will be occasion when the Senate will be in legislative session, even during the consideration of the impeachment case; and I wish to say now that if the same course of procedure shall be pursued that has been followed since the beginning of the trial now in progress by the Senate as a court it looks like a conclusion of that case may be almost indefinitely deferred. It will be necessary during the trial to proceed from time to time with legislative business, and I hope the Senator from Oregon will concede that fact.

Mr. McNARY. Mr. President, that hardly answers the purpose of my objection. I wanted to have an opportunity to confer with the Senator from Virginia, in the hope that we may come to some agreement that we can proceed for a few days with the trial and later on take up the measure which is now presented to the Senate. Entertaining that view, I hope the motion will not be made tonight. It can be made tomorrow if it is so desired, but I should like to have the opportunity——

Mr. ROBINSON of Arkansas. Mr. President——

Mr. McNARY. Just a moment—at least I should like to have the opportunity of conferring with the Senator from Virginia before the status of this bill is fixed as the unfinished business.

Mr. ROBINSON of Arkansas. Mr. President, the Senator from Virginia himself yesterday sought to make the motion and was induced to defer it at the suggestion of the Senator from Oregon. He called me this morning and requested that this motion be made, and I am sure he has been in conference with the Senator from Ohio.

There is no disposition to crowd action on the bill. Ample opportunity will be afforded for Senators to familiarize themselves with it. Many of the provisions of the bill have already been fully threshed out by the Senate during the course of prolonged consideration, and, as I understand, there are comparatively few new provisions in the bill. So I think the Senator from Oregon ought not to ask again that the Senate proceed without some unfinished business.

Mr. McNARY. Mr. President, I have no doubt that the able Senator from Virginia has made the request, but I should like to have the opportunity of conferring with that Senator concerning this matter before the motion is made, and I simply ask that it go over until tomorrow.

The PRESIDING OFFICER. Does the Senator from Ohio withdraw his motion or insist upon it?

Mr. BULKLEY. I still am inclined to insist upon the motion at this time. I can assure the Senator from Oregon——

Mr. ROBINSON of Arkansas. May I make a suggestion to the Senator from Ohio?

Mr. BULKLEY. Certainly.

Mr. ROBINSON of Arkansas. In view of the statement often repeated by the Senator from Oregon that there is some reason which prompts him to desire a conference with the Senator from Virginia before the motion is voted on, may I suggest to the Senator from Ohio that he let the motion be pending and that we now take a recess.

Mr. McNARY. That will be very satisfactory to me.

Mr. BULKLEY. I am quite satisfied with that.

RECESS

Mr. ROBINSON of Arkansas. I move that the Senate stand in recess until the conclusion of the session of the Senate sitting as a Court of Impeachment on tomorrow.

The PRESIDING OFFICER. The question is on the motion of the Senator from Arkansas.

The motion was agreed to; and (at 5 o'clock and 12 minutes p.m.) the Senate took a recess until the conclusion of the proceedings of the Senate sitting as a Court of Impeachment on tomorrow, Wednesday, May 17, 1933, the hour of meeting of the Senate sitting as a Court of Impeachment being 10 o'clock a.m.

## CONFIRMATIONS

*Executive nominations confirmed by the Senate May 16 (legislative day of May 15), 1933*

UNDER SECRETARY OF THE TREASURY

Dean G. Acheson to be Under Secretary of the Treasury.

UNITED STATES CIRCUIT JUDGE

Francis A. Garrecht to be United States circuit judge, ninth circuit.

PROMOTIONS IN THE NAVY

*To be rear admiral*

Joseph R. Defrees.

*To be captains*

Damon E. Cummings. Bryson Bruce.

*To be commander*

Carroll M. Hall.

*To be lieutenant commander*

Herbert M. Scull.

*To be lieutenants*

| | |
|---|---|
| Walter S. Ginn. | Paul Graf. |
| Emory W. Stephens. | Warren D. Wilkin. |
| John M. Kennaday. | Everett W. Abdill. |
| Philip M. Boltz. | Paul L. F. Weaver. |
| Sumner K. MacLean. | Willis E. Cleaves. |

*To be chief pharmacists*

Will Grimes. Paul T. Rees.

*To be chief pay clerks*

Lawrence W. Sadd. Arthur D. Gutheil.

# HOUSE OF REPRESENTATIVES

## TUESDAY, MAY 16, 1933

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D.D., offered the following prayer:

Blessing and honor, glory and power, be unto Him who sitteth upon the throne, and to the Lamb forever and ever. In all things, blessed Lord, inspire us to be faithful and diligent, patient and hopeful, and to know that it is no vain adventure to be directed and held by these virtues. Give glad assurance to us, and cease not to guide us in all our ways. By Thy grace bind together the tissues of our habits. Bless us today with the hand that helps and with the heart that cheers. May we remember those who have been watching and longing for the day dawn through these unrewarding years. We appeal to Thee, Lord; give help, and set their very souls climbing eagerly toward that life that is vastly big and fine, and in which there are no more fears and distrust. Bring to our whole land peace and service, and hail the hour of rejoicing. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Horne, its enrolling clerk, announced that the Senate insists upon its amendments to the bill (H.R. 5040) entitled "An act to extend the gasoline tax for 1 year, to modify postage rates on mail matter, and for other purposes", disagreed to by the House, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HARRISON, Mr. KING, Mr. GEORGE, Mr. REED, and Mr. COUZENS to be the conferees on the part of the Senate.

LEAVE OF ABSENCE

Mr. BYRNS. Mr. Speaker, I ask unanimous consent that the gentleman from California [Mr. BURKE] be excused today and tomorrow on account of the death of his father.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. GRIFFIN. Mr. Speaker, I ask unanimous consent to address the House for 15 minutes.

The SPEAKER. Is there objection to the request of the gentleman from New York [Mr. GRIFFIN]?

There was no objection.

Mr. GRIFFIN. Mr. Speaker, Lawrence Sullivan, in the Washington Post today, intimates that there is a growing sentiment in the House in favor of the sales tax. I doubt very much whether that expression of opinion is based on very reliable authority. So far as I am concerned, I have not changed my attitude on the sales tax, and I know of no one else who has.

A sales tax is fundamentally a consumption tax, and a consumption tax falls on the ultimate consumer, not only on those who have regular incomes but upon the 12,000,000 or more who are without any means whatever.

It is said that exemptions can be made, but the moment you make exemptions to a sales tax it ceases to be a sales tax, and you are immediately in a maze of contradictions.

Mr. RANKIN. Will the gentleman yield?

Mr. GRIFFIN. I yield.

Mr. RANKIN. Those who have been advocating the sales tax for years have been doing so for the purpose of trying to take the income and inheritance tax off of large incomes and large fortunes. All they want is to get their noses under the tent. If they can ever establish the policy in this country, their hope is to impose all taxes through a sales tax, and therefore on the people least able to pay.

Mr. GRIFFIN. That is very true. The sentiment for a sales tax comes largely from those who have to pay heavy income and inheritance taxes. While that is true, our experience should teach us that there is an element of justice in their dissatisfaction with the conditions that exist. Heavy taxation leads to evasion and shifting. The idea of having a part of the country pay all the taxes is in my opinion a fallacy. The fundamentals of sound taxation require a tax which is spread over a broad area, and one which falls equitably upon all of the tax-paying public. It is unjust to impose heavy burdens upon a part and allow others to go scotfree, and yet that is what has been done blindly for years.

Mr. FREAR. Will the gentleman yield?

Mr. GRIFFIN. Let me finish my statement first and then I will yield.

Mr. FREAR. I wanted to find out who was going scotfree.

Mr. GRIFFIN. We are letting them go scotfree of taxation because we have blindly tried to overdo taxation. The old tax rates were fairly reasonable. That is, the reduced tax rates that were put into effect in January 1929. The income derived was encouraging; but in 1932 we raised the income taxes to such an extent that evasions continued as they never did before.

There were 498,000 corporations which filed income-tax returns in 1930. Of that number, 231,287 showed no net